TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~408~~ 84

THE SIMMONS CREEK COAL COMPANY ET AL.,
APPELLANTS,

vs.

JOSEPH I. DORAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF WEST VIRGINIA.

FILED AUGUST 25, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 408.

THE SIMMONS CREEK COAL COMPANY ET AL., APPELLANTS,

vs.

JOSEPH I. DORAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF WEST VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Map of property owned by Jos. I. Doran	2	1
Exhibit A—Deed of Rob't D. Belchar *et ux.* to William H. Witten, December 23, 1852	15	9
A No. 2—Deed of Rob't D. Belchar *et al.* to William H. Witten, December 23, 1852	17	10
A No. 3—Deed between William H. Witten *et al.*, John Graham, Jr., and Joseph I. Doran, November 5, 1881	19	12
A No. 4—Deed of Joseph I. Doran *et ux.* to The Southwest Virginia Improvement Co., January 1, 1883	23	14
A No. 5—Deed of The Southwest Virginia Improvement Co. to Joseph I. Doran, December 13, 1883	42	25
B No. 1—Deed of C. Belchar to Joseph I. Doran, April 2, 1885	45	27
B No. 2—Deed of C. Belcher to George W. Belcher, October 18, 1884	48	29
B No. 3—Deed of Geo. W. Belcher *et ux* to Newton L. Reynolds, December 4, 1884	50	31
B No. 4—Deed of Geo. W. Belcher *et ux.* to P. H. Rover, February 25, 1885	53	32

JUDD & DETWEILER, PRINTERS, WASHINGTON, JUNE 7, 1890.

	Original.	Print.
Exhibit B No. 5—Deed of N. L. Reynolds to Simmons Creek Coal Co., February 28, 1885	56	35
B No. 6—Deed of P. H. Rover *et ux.* to Simmons Creek Coal Co., February 28, 1885	58	36
C No. 1—Record in case Belcher *vs.* McNutt, com'r, &c.	60	37
Petition	60	37
Order of reference	61	38
Commissioner's report	63	39
Decree	65	41
Exhibit G. W. B.—Deed C. Belcher to G. W. Belcher, Oct. 18, 1884	67	42
Exhibit C. B.—Deed G. Belcher to C. Belcher, May 12, 1842	69	43
C No. 2—Deed of R. B. McNutt, com'r, &c., to Geo. W. Belcher, December 3, 1884	71	44
Subpœna	73	46
Marshal's return	74	46
Order filing answer, &c.	76	47
Answer of The Simmons Creek Coal Co.	76	47
Exhibit No. 11—Map showing land in controversy	87	53
No. 1—Deed of C. Belcher to Geo. W. Belcher, October 18, 1884	88	54
XX—Deed of R. B. McNutt, com'r, &c., to Geo. W. Belcher, December 3, 1884	89	55
No. 2—Deed of Geo. W. Belcher *et ux.* to Newton L. Reynolds, December 4, 1884	92	56
No. 3—Deed of Geo. W. Belcher *et ux.* to P. H. Rover, February 25, 1885	94	58
No. 4—Deed of N. L. Reynolds to I. A. Welch, January 13, 1885	98	60
No. 5—Deed of I. A. Welch *et ux.* to A. W. Reynolds, January 13, 1885	100	62
No. 6—Deed of I. A. Welch *et ux.* to The Simmons Creek Coal Co., February 28, 1885	102	63
No. 7—Deed of A. W. Reynolds to The Simmons Creek Coal Co., February 28, 1885	104	65
No. 8—Deed of P. H. Rover *et ux.* to The Simmons Creek Coal Co., February 28, 1885	106	66
No. 9—Deed of N. L. Reynolds to The Simmons Creek Coal Co., February 28, 1885	108	67
Order filing answer of N. L. Reynolds *et al.*, &c.	109	68
Answer of N. L. Reynolds	110	68
Deed from Geo. W. Belcher *et ux.* to N. L. Reynolds, December 4, 1884	111	69
Answer of George W. Belcher	114	71
Deed from Geo. W. Belcher *et ux.* to N. L. Reynolds, December 1, 1884	122	76
Deed from Geo. W. Belcher *et ux.* to P. H. Rover, Feb. 25, 1885	124	78
Order filing answer of P. H. Rover, ordering survey, &c.	128	80
Answer of P. H. Rover	129	80
Order filing surveyor's report	130	82
Report of Surveyor A. P. Sinnett	131	82
Map of land in controversy made by Surveyor Sinnett	141	88

	Original.	Print.
Order as to submission on briefs, &c.	142	88
Stipulation as to lost deed, &c.	142	88
Evidence for complainant	143	89
Testimony of W. Scott Witten	143	89
Henry Sadler	164	100
John W. Spotts	169	103
James A. Crockett	173	106
W. Scott Witten (recalled)	180	109
William Ingles	183	111
Exhibits with foregoing testimony	193	116
(Witten)—Deed of Robert D. Belcher *et al.* to Wm. H. Witten, December 23, 1852	193	116
(Witten)—Deed of Andrew G. Belcher *et ux.* and Graham to Doran, November 17, 1881	195	117
(Witten)—Tax tickets	199	119
(Witten)—Clerk's certificate as to charge of lands	205	125
(Sadler)—Deed O. Belcher *et ux.* to Henry Sadler, Oct. 25, 1870	207	127
(Spotts)—Notice of Doran to Booth & Co. *et al.*, Feb. 24, 1885	209	129
(Spotts)—Notice of Doran to Taylor *et al.*	210	129
(Witten)—Clerk's certificate as to charge of land	212	130
(Ingles)—Deed from Robert Belcher *et ux.* to C. Belcher, 1848	214	131
Deposition of Robert D. Belcher	217	133
Exhibit A (Belcher)—Deed of R. D. Belcher *et ux.* to Wm. H. Witten, December 23, 1852	231	139
Deposition of S. P. Pearis	234	140
Exhibit Extract from Land Books	234*a*	141
Exhibit Extract from Land Books, Chrispianos Belcher Land	240*a*	158
Exhibit A No. 1—Deed of Robert D. Belcher *et ux.* to Wm. H. Witten, December 23, 1852	251	162
Exhibit A No. 2—Deed of Rob't D. Belcher *et al.* to Wm. H. Witten, December 23, 1852	253	164
Exhibit D. B. 3, page 457—Deed of Wm. Witten to Wm. H. Witten, September 25, 1852	255	165
Exhibit Deed Book No. 4, page 373—Deed C. Belcher *et ux.* to O. Belcher, February 13, 1857	258	166
Exhibit D. B. 4, page 339—Deed C. Belcher *et ux.* to Henry Walker, April 12, 1856	260	167
Exhibit D. B. No. 2, page 211—Deed James Hector to Rob't Belcher, May 11, 1842	261	168
Deposition of William Miller	264	170
Map of lands on Simmons and Flipping creeks	270	171
Deposition of S. W. Hammack	271	171
Notice of taking testimony	282	180
Exhibit D. B. No. 8, page 177 (Miller)—Deed C. Belcher *et ux.* to Mary E. Belcher, September 18, 1873	283	181
Exhibit "S. W. Hammack"—Deed Rob't D. Belcher *et ux.* to Wm. H. Witten, December 23, 1852	285	183
Exhibit "S. W. Hammack"—Deed Robert D. Belcher *et ux.* to Wm. H. Witten	286	183
Exhibit D. B. No. 7, page 433 (Miller)—Deed C. Belcher *et ux.* to Mary E. Belcher, September 10, 1873	287	184
Final decree	289	185

	Original.	Print.
Map filed with decree	293	188
Appeal bond	294	188
Clerk's certificate	295	189
Form of writ of error	296	189
Citation	298	190
Proof of service of citation	299	190

1 Pleas held before the Hon. John J. Jackson, judge of the district court of the United States, district of West Virginia, holden at Charleston, in said district, on the 18th day of February, A. D. 1888, and of the Independence of the United States of America the 112th.

Be it remembered that heretofore, to wit, in the clerk's office of the district court of the United States, district of West Virginia, at Charleston, August 1st, 1885, among the proceedings had was the following, to wit:

JOSEPH I. DORAN
vs.
SIMMONS CREEK COAL CO. & Others. } In Chancery.

This day came the plaintiff, Joseph I. Doran, by his attorney, James H. Ferguson, Esqr., and tendered his bill and exhibits in the above-entitled cause, which are hereby filed.

Teste: JASPER Y. MOORE, *Clerk.*

(*Bill and Exhibits.*)

To the Honorable John J. Jackson, judge of the district court of the United States in and for the district of West Virginia, sitting with circuit court powers at Charleston, in said district:

Your orator, Joseph I. Doran, a resident and citizen of the State of Pennsylvania, brings this his bill against the "Simmons Creek Coal Company," a corporation duly organized and doing business in the State of West Virginia under the laws thereof, and which corporation is a citizen and inhabitant of the State of West Virginia.

2 And your orator, humbly complaining unto your honor, avers and says that on or about the — day of ——, 1844, one Chrispianes Belcher, of Mercer county, then in the State of Virginia, but now in the State of West Virginia, being seized in fee of a large tract of land situate in the said county of Mercer and in the now State and district of West Virginia, to wit, 1,500 acres, more or less, sold and conveyed to one Robert D. Belcher, by deed bearing date on that day, a certain portion and part of said 1,500 acres, supposed to contain 200 acres; but said sale and conveyance was of the boundary in gross and not by the acre; which said tract was bounded as follows, to wit:

Beginning at two birches on Simmons creek, a branch of Bluestone river, at or near the mouth of a small branch, which point is shown on the map herewith filed as part of this bill, marked "Map of property owned by Joseph I. Doran," &c.,

(Here follows map marked page 2.)

by the words "two birches," where the north line of said Robert D. Belcher's 1,500-acre tract crosses said Simmons creek, as laid down

in said map; thence running up said Simmons creek to the forks thereof and up the left-hand fork of said creek to the point shown by the black line on said map, where it crosses said creek below the dotted line; thence with the said black line S. 55 W. 120 poles to six chestnuts, as laid down on said map, at the point where the said black line and the dotted lines meet; thence with the dotted line called on said map "Lybrook line" to a double and single poplar at the point shown on said map where the said dotted line crosses the said north line of said Robert D. Belcher 1,500-acre tract, the course and distance called for being S. 35 E. 310 poles; thence with the said line of said Robert B. Belcher to the two birches, the place of beginning, the course and distance called for being N. 40 E. 250 poles.

3 Your orator here avers and says that the line of said 200 acres running from the two birches up Simmons creek was defectively described in the said deed, but said line, as herein described and laid down on said map, was what was meant and intended both by the grantor and grantee in said deed, and that none of the courses and distances named in said deed were correct, but that the corners called for therein were all then well known and are still well known, and are and were located in as hereinbefore stated and described.

Your orator further says that the said deed was never recorded, and that the same is lost, mislaid, or made way with by parties claiming adverse to him, and he cannot now find the same.

And your orator further avers and says that after the execution and delivery of said deed to him the said Robert D. Belcher, by deed bearing date the 23rd day of December, 1852, sold and conveyed the said 200 acres (more or less) to one William H. Witten; a copy of which deed is herewith filed as part of this bill, marked "A" No. 1.

The description of said land in said deed is also defective, but the same lines, corners, courses, &c., hereinbefore mentioned of the said deed from Chrispianos Belcher to him, the said Robert D. Belcher, was intended and understood by both parties to said deed as the boundaries thereof.

That on the said day, to wit, on the said 23rd day of December, 1852, the said Robert D. Belcher and Chrispianos Belcher sold and conveyed to the said William H. Witten a body of land supposed to contain 1,100 acres, which bounds on the said two birches and six chestnuts and includes a part of the same land conveyed by the said deed to Witten executed by the said Robert D. Belcher.

A copy of this deed is herewith filed as part of this bill, marked "A" No. 2.

4 That the said Witten took the actual possession of the said 200 acres and 1,100 acres at the date of said deed and held and occupied the same under the said deeds from that time until he sold and conveyed the said 200 acres to this plaintiff, as hereinafter mentioned, and that during all that time said Witten claimed the line of said 200-acre tract commencing at the said two birches and running up Simmons creek and up the left-hand fork thereof and

to the said six chestnuts, and from there to the double and single poplar, and thence to the beginning, as hereinbefore mentioned and described, as the boundaries of the said deed from Chrispianos Belcher to Robert D. Belcher and from the said Robert D. Belcher to him, and paid all the taxes charged and chargeable thereon.

Your orator further avers and says that on the 5th day of November, 1881, the said William H. Witten and wife, W. S. Witten, and John Graham, Jr., said Graham claiming some equitable interest therein by deed of that date, sold and conveyed the said tract of 200 acres, more or less, to your orator; a copy of which deed is herewith filed as part of this bill, marked "A" No. 3.

That by deed bearing date the 1st day of January, 1883, your orator conveyed said tract of land with others to the Southwest Virginia Improvement Company, a corporation formed and organized under the laws of the Commonwealth of Virginia and doing business in the State of West Virginia under the laws thereof; a copy of which deed is here filed as part of this bill, marked "A" No. 4.

And that said corporation, the Southwest Virginia Improvement Company, by deed duly executed and bearing date the 13th day of December, 1883, reconveyed the said tract of 200 acres, more or less, with other lands to your orator, and that your orator is now
5 seized in fee of the said tract of 200 acres, more or less. A copy of said last-named deed is herewith filed as part of this bill, marked "A No. 5."

That on the 2nd day of April, 1885, the said Chrispianos Belcher, in order to ratify and confirm his said deed of — day of ——, 1844, to the said Robert D. Belcher for the said 200 acres, more or less, as well as the said deed from the said Robert D. Belcher to the said William H. Witten for the same lands, and to save any and all questions as far as he could which might arise as to the said last-named deed, executed and delivered to your orator a deed of conveyance of the same 200 acres, more or less; a copy of which deed is herewith filed as part of this bill, marked " B No. 1."

Your orator, further complaining, avers and says that on the 18th day of October, 1884, one George W. Belcher procured from the said Chrispianos Belcher a deed of conveyance of a tract of land, as stated in said deed, supposed to contain 75 acres, more or less, and described as beginning at 2 birches on the west bank of Simmons creek, corner to William H. Witten; thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons creek, corner to Witten and Graham-Payne tract; thence N. 85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons creek, corner to 400 acres deeded by said Chrispianos Belcher to Obadiah Belcher; thence down Simmons creek with the meanders thereof to the beginning.

By reference to the said map herewith filed it will be seen that the line of this deed as called for from the six chestnuts is shown thereon by the dotted line to the corner of the tract named thereon as the William Payne tract, which is the one intended in the de-

scription as the Graham-Payne tract; and the next call of
6 said deed is shown on said map by the black line from the end of said dotted line to the middle fork of Simmons creek, and the last call in said deed is shown on said map by the creek as laid down thereon from said black line to the beginning.

A copy of this deed is herewith filed as part of this bill, marked "B No. 2."

That the said George W. Belcher and wife, by deed dated the 4th day of December, 1884, conveyed to one Newton L. Reynolds the undivided $\frac{5}{8}$ of the said tract of land so conveyed to said Geo. W. Belcher as aforesaid; a copy of which deed is herewith filed as part of this bill, marked "B No. 3."

That said George W. Belcher and wife, by deed bearing date the 25th day of February, 1885, conveyed to P. H. Rorer the remaining undivided $\frac{3}{8}$ of the said tract of land; a copy of which deed is herewith filed as part of this bill, marked "B No. 4."

That the said Newton L. Reynolds, by deed bearing date the 28th day of February, 1885, conveyed the undivided $\frac{3}{8}$ of the $\frac{5}{8}$ of said tract of land so conveyed to him as aforesaid to the defendant, "Simmons Creek Coal Company;" a copy of which deed is herewith filed as part of this bill, marked "B No. 5."

That the said P. H. Rorer, by deed dated the 28th day of February, 1885, conveyed the said $\frac{3}{8}$ of said tract so conveyed to him as aforesaid to the defendant, "Simmons Creek Coal Company;" a copy of which deed is herewith filed as part of this bill, marked "B No. 6."

And that the said defendant, "Simmons Creek Coal Company," claims, as your orator is informed and believes, to own the remaining $\frac{3}{8}$ of said tract of land, but how and in what way your orator is not informed, and so far as he knows title to said $\frac{3}{8}$ still remains in the said Newton L. Reynolds.

7 And your orator, further complaining, avers and says that, as will be seen by reference to said deed from Chrispianos to George W. Belcher, the line of the tract therein described calls for running from the 2 birches with William H. Witten's line to the six chestnuts without regard to the creek, while the line from the 2 birches to the 6 chestnuts, as called for in the deed from Chrispianos to Robert D. Belcher and in that from Chrispianos Belcher to your orator, *it* calls to run from the 2 birches up Simmons creek S. 55 W. 120 poles to the 6 chestnuts; but your orator avers and charges that the said Witten's line as it existed before his said deed to your orator ran from the said 2 birches up Simmons creek to the forks thereof and up the left-hand fork of said creek to the line of S. 55 W. and with said line to the 6 chestnuts, as hereinbefore described and as is shown on the said map herewith filed as aforesaid; that shortly after the said George W. Belcher obtained his said deed from said Chrispianos Belcher he, as your orator is informed and believes and so charges, ascertained, if he did not know it before, that he had acquired no title to the lands embraced in said deed thereunder, and he went to the circuit court of Mercer county in November, 1884, and filed his petition therein, stating his purchase and deed from Chrispianos Belcher, and that the lands thereby conveyed to him

had been forfeited to the State by reason of the failure of the said Chrispianos Belcher to have them entered on the land books and charged with taxes, as required by statute, and asked to be allowed to pay the taxes and redeem said land from the alleged forfeiture.

That at the time of filing said petition no report of the forfeiture of said land had been made to the auditor and no record of any such forfeiture had been made in the auditor's office, nor had the
8 said land been certified and set for sale, &c., as provided by the statute, and no proceedings had been commenced or were pending in said court for the sale of said lands for the benefit of the school fund; that upon the filing of said petition a decree was at once entered referring the same to a commissioner to report thereon without requiring notice to be given to any one, and a report thereon was made by the commissioner at the same term of said court. Six days after said reference and two days thereafter a decree was entered by said court allowing said Belcher to redeem said land from forfeiture and requiring the commissioner of school lands of Mercer county to convey said land to George W. Belcher by metes and bounds, which was done; all of which will fully and at large appear by reference to copies of said petition and proceedings thereon, herewith filed as part of this bill, marked "C No. 1," and by a copy of the deed from said commissioner of school lands to said G. W. Belcher, herewith filed as part of this bill, marked "C No. 2."

And your petitioner avers and charges that he had no notice, knowledge, or information of any sort of the filing or intent to file said petition, or of the proceedings of the court thereon, or of the making of said deed, or of an intention to make it by said commissioner of school lands until long after said proceedings had been had and completed and said deed had been made and recorded; and he further avers and charges that the said lands embraced in said deed of Chrispianos Belcher to said George W. Belcher and mentioned in said petition, proceedings, and deed from said commissioner of school lands to said George W. Belcher was not forfeited for the non-entry of the same on the land books, as alleged in said petition, nor for any other cause whatever, for the reason especially that the said Chrispianos Belcher had before leav-
9 ing Virginia sold and conveyed the same, as hereinbefore stated, and he had no title thereto which could be forfeited, and that said William H. Witten and those claiming under him, your orator included, had kept and had said lands, in connection with other lands owned by them, regularly charged on the proper land books and had paid all the taxes charged and chargeable thereon up to and since the time of filing the said petition by the said George W. Belcher, and that therefore the whole of the acts, doings, and proceedings of the said George W. Belcher in procuring said deed from said Chrispianos Belcher, and in filing said petition, and in procuring the said proceedings, orders, and decrees thereon, and in procuring said deed to be made to him by the said commissioner of school lands were had and done and procured to be done as aforesaid by the said George W. Belcher with the intent and design and for the purpose of cheating and defrauding this

plaintiff out of the said land, and that the whole of the said proceedings of the said circuit court of Mercer county were without jurisdiction or authority of law and were and are therefore null and void and of no effect whatever.

And your orator further avers and says that the defendant, "Simmons Creek Coal Company," was cognizant of all the above facts in relation to the pretended forfeiture of said tract of land, and that said proceedings were gotten up and carried out expressly with the view of assisting the said company to get the said land by a title which it was believed would enable it to hold them against your orator, as your orator is informed and believes and so charges.

That in order to further carry out said scheme it will be seen by reference to the deed that the line from the 2 birches to the 6 chestnuts in the deed from George W. Belcher to Rorer is N. 50 degrees
26 minutes W. 80.83 chains up Simmons creek, crossing
10 ridge and spurs to the chestnuts, thus making a straight line and thereby including in said deed a large and very valuable portion of the said land which is the property of your orator and included in his deed aforesaid, and that Rorer conveys to said company the same land so conveyed to him; that in the deed from said Belcher to N. L. Reynolds said line is N. 50 degrees 40 minutes W. 85.40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of ridges to 6 chestnuts, and that Reynolds, in his deed to said company, conveys by the description of the land and its boundaries set out in the deed from George W. Belcher to said P. H. Rorer.

And your orator avers and charges that the said "Simmons Creek Coal Company," under and by virtue of the said deed to it, claims a large part of the most valuable portion of the said 200 acres, more or less, the property of your orator as aforesaid, and not only this, but that said company, by its officers, agents, servants, and employees, have actually entered upon and taken possession of said portion of your orator's said land, and is now holding the same in opposition to and in defiance of him, and is committing waste thereon by cutting down and destroying your orator's valuable timber, and is opening and preparing to open thereon coal mines, with a view to mining and shipping of coal therefrom, and that they will so do unless restrained therefrom by the order of your honor, and that if they are permitted to do so the injury thereby caused to your orator will be irreparable.

And your orator is advised and believes and so charges that under the facts and circumstances of this case it is necessary for him, by and through the decree of your honorable court, to set up
the said deed from Chrispianos Belcher to Robert D. Belcher,
11 which is lost and not recorded, as hereinbefore stated, and that it is also necessary to have a construction by your honor's court of the said deeds from Robert D. Belcher to William H. Witten and from said Witten to your orator as to the true and proper boundaries of the said 200 acres, more or less, conveyed by said deeds, and also of the said deed of Chrispianos Belcher to said George W. Belcher as to what line is intended by the W. H. Witten

line therein called for and what is the true boundary line of said deed.

And your orator further avers and charges that the said deeds from Chrispianos Belcher to George W. Belcher and from R. B. M'Nutt, commissioner of school lands of Mercer county, to said George W. Belcher, the said deeds of George W. Belcher to Reynolds and Rorer, and the said deeds from said Reynolds and Rorer to said Simmons Creek Coal Company, and the said claim of said company thereunder, all constitute a serious and damaging cloud upon his title to the said 200 acres, more or less, of land so conveyed to and now owned and held by him as aforesaid, and that unless the same is removed therefrom the said tract of land, which would otherwise be of great value to him, will in fact be of little or no value whatever, and owing to the loose and vague descriptions of the boundaries of said land in the deeds under which he holds them he is advised and believes it would be unsafe to commence and prosecute an action of ejectment to oust the said Simmons Creek Coal Company, its officers, agents, servants, and employees, from the possession thereof.

And your orator further avers that the names of the said officers, agents, servants, and employees of the said Simmons Creek Coal Company whom it has put and placed upon and in possession of the said lands of your orator and who by its authority and
12 direction are committing the acts of waste as aforesaid are as follows: John Freeman, Jenkins Jones, Levi D. Soloman, James M. Thomas, Charles P. Clemence, William T. Clemence, Hank Clemence, Theodore Franklin, Walter Franklin, and Floyd E. Smith, all of whom are residents and citizens of the State and district of West Virginia, and Joseph Taylor, Michael H. O'Connor, Thomas O'Connor, Sampson Smith, all of whom are residents of West Virginia, but claim to be citizens of Pennsylvania, but as they are not necessary parties to this suit, as your orator is informed and believes, they are not made parties to this bill and are only named in order that they may be affected by the injunction herein prayed for; that the said George W. Belcher, Robert D. Belcher, R. B. M'Nutt, P. H. Rorer, and Newton L. Reynolds are citizens and inhabitants of the State and district of West Virginia, and the said Chrispianos Belcher is a citizen and inhabitant of the State of Missouri.

And your orator being without any adequate and safe remedy at law and as a court of equity alone can furnish him full and adequate relief in the premises, he prays that the said "Simmons Creek Coal Company" and each and all of its said officers, agents, servants, and employees who are citizens and inhabitants of the State and district of West Virginia, as hereinbefore stated, Robert D. Belcher, George W. Belcher, Chrispianos Belcher, P. H. Rorer, N. L. Reynolds, and R. B. M'Nutt, commissioner of school lands of Mercer county, be made and taken as defendants to this bill, and that the said defendant company, "Simmons Creek Coal Company," be compelled to answer on oath in due form of law all and singular the allegations of this bill as fully and completely and to the same extent as if the allegations and each of them were here again repeated and

13 it specially interrogated thereto, and that the defendant, Robert D. Belcher, do in like manner answer all and singular the allegations of this bill in relation to the execution of said deed to him by Chrispianos Belcher for said 200 acres of land, more or less, and the failure to record the same and the loss thereof.

And your orator further prays that your honor will by a proper decree set up and establish the said last-named deed so executed by said Chrispianos Belcher to Robert D. Belcher as aforesaid, with its proper metes and bounds, the same being necessary and material to your orator to the perfection of his chain of title of said 200 acres, more or less, of land in question in this suit.

And he further prays that your honor will by a proper decree construe the deeds aforesaid, to wit, the said deed from Robert D. Belcher to William H. Witten, the deed from said Robert D. Belcher and Chrispianos Belcher and wives to said William H. Witten, the said deed from said Wm. H. Witten, W. S. Witten, and John Graham, Jr., to your orator, and the deed from said Chrispianos Belcher to said George W. Belcher, and fix and define the true boundary lines of each of them, and, if it be found necessary, to correct and re-form the said deeds to Robert D. Belcher, Wm. H. Witten, and your orator so as to fix and define the true boundary lines thereof according to the contract and the true intent and meaning thereof between the parties thereto, as hereinbefore stated.

And that your honor will by a like decree vacate, annul, and set aside the said deeds and each of them from George W. Belcher to P. H. Rorer and N. L. Reynolds and from said Rorer and Reynolds to the said "Simmons Creek Coal Company" and from the said McNutt, commissioner of school lands as aforesaid, to said George W. Belcher and each of them, so far, at least, as they and each of them interfere and conflict with said lands of your orator and the boundaries thereof as aforesaid as clouds upon the title of your

14 orator to his lands, and that your orator be restored to and quieted in the possession of that portion of his said lands so covered by said last-named deeds as aforesaid.

And your orator further prays that the said "Simmons Creek Coal Company" and all and each of its said officers, agents, servants, and employees hereinbefore named, and all others in any way connected with it or acting under it, be enjoined and restrained from cutting, using, or otherwise disposing of the timber on said land so owned or held by your orator as aforesaid, and from opening or operating coal or other mines on the said lands of your orator, and from the commission of any and all waste thereon, until the further order of your honorable court and until the matters and things herein stated and set forth can be heard and determined in equity, and that upon the final hearing your honor will grant to your orator such other, further, and general relief herein as in equity he is entitled to and the nature of his case may require.

And your orator further prays that your honor will also grant process of spa., directed to the said defendants to this bill hereinbefore mentioned, commanding them and each of them to answer this bill on oath on a certain day to be therein named, &c.

JOSEPH I. DORAN.

STATE OF PENNSYLVANIA, }
County of Philadelphia. }

I, Alexander Ramsey, a notary public for the State of Pennsylvania, residing in the city of Philadelphia, do hereby certify that Joseph I. Doran, the plaintiff named in the foregoing bill, this day personally appeared before me in my county aforesaid, and, being by me first duly sworn, deposes and says that the facts and allegations in said bill stated and made so far as they are stated and made in his own knowledge are true, and that so far as they are stated and made on the information of others he believes them to be true.

Given under my hand and the seal of my office this 9th, ninth, day of July, 1885.

[Seal Alexander Ramsey, Notary Public, Philadelphia, Pa.]

ALEX. RAMSEY,
Notary Public.

(Exhibit "A" called for in the foregoing bill is in the following words and figures, to wit:)

This indenture, made this 23rd day of December, 1852, between Robert D. Belchar and Rebecca, his wife, — the one part, and William H. Witten, of the other part, both of the county of Mercer and State of Virginia, witnesseth: That, in consideration of the sum of one hundred and twenty-five dollars paid to the said R. D. Belchar by th- said William H. Witten, the said R. D. Belchar doth grant unto the said William H. Witten, his heirs, &c., all that tract of land, containing by estimation two hundred acres, be the same more or less, lying in Mercer county, on Simmons creek, waters of Bluestone, and — as follows, to wit: Beginning at two birches on Simmons creek, corner to Chrispianos Belchar's land, thence up said creek with Miller's line S. 55 W. 120 poles to six ches-nuts, corner to Miller's survey, and with the same S. 35 E. 310 poles to a do-ble and single popular, corner to said Belchar, and with the same N. 40 E. 250 poles to the begin-ing; and the said Robert D. Belchar and Rebecca, his wife, doth, for themselves and their -eirs, hereby covena-t and warrant a general title to the above-conveyed land.

Witness the following signatures and seals.

ROBERT D. BELCHAR. [SEAL.]
her
REBECCA x BELCHAR. [SEAL.]
mark.

MERCER COUNTY, *To wit:*

This day Rebecca Belchar, wife of said Robert D. Belcher, a party to the within deed, bearing date 23rd day of December, 1852, personally came before us, justices of the peace in said county, and, being examined by us privil*y* and apart from her husband and haveing the deed explained to her, acknowledge- the same to be her act and deed, and that she has willingly signed it, and that she does not

wish to retract it, and directed us to certify to the clerk of Mercer county court that said deed may be recorded.

Given under our hands this 7th day of May, 1853.

GEO. P. BROWN, *J. P.*
ELI BAILEY, *J. P.*

MERCER COUNTY, *To wit:*

This day Robert D. Belcher, party to the annexed deed, dated the 23rd day of *day of* December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be his act and deed, and directed me to certify said acknowledgment to the clerk of Mercer county court that *tha* deed may be recorded.

Given under my hand this 7th day of May, 1853.

GEO. P. BROWN, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belchar and wife to William H. Witten, conveying land, with a certificate of acknowledgment and privy examination before two justices, was this day presented in court and ordered to be recorded.

Teste: WM. F. HEPTINSTALL, *D. C.*

17 STATE OF WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Samuel P. Pearis, clerk of the county court of said county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 55 cts.

S. P. P., *Clk.*

(Ex. "A No. 2" referred to in the bill is as follows:)

This indenture, made this 23rd day of December, 1852, between Robert D. Belcher and Rebecca, his wife, and Chrispianos Belcher and Rebecca, his wife, of the one part, and William H. Witten, of the other part, all parties of Mercer county, Virginia, witnesseth:

That, for and in consideration of the sum of thirty-five dollars in hand paid by the s'd William H. Witten and in consideration thereof, the said Belchars doth grant unto the said William H. Witten all that tract of land, containing by estimation eleven hundred acres, be the same more or less, lying in Mercer county, Virginia, on the waters of Bluestone and Elkhorn, and bounded as follows, to wit, viz: Beginning at the north of Laurel, a branch of Bluestone, thence north 27 W. in the line of the Wilson Kery Nicholas 500,000-acre survey, and with the same about E. 640 poles to two birches; thence continue on the said line 280 poles to a double birch on s'd line; thence leaving said line north 55 E. 294 poles to six chestnuts; thence south 35 east 940 poles to the beginning; and the said Bel-

chars doth, for themselves and their -eirs, hereby covena-t and agree that thay will warrant and defend a special title to the above-conveyed land.

Witnesseth the following signatures and seals.

ROBERT D. BELCHAR. [SEAL.]

his
CHRISPIANOS x BELCHAR. [SEAL.]
mark.

her
REBECCA x BELCHAR. [SEAL.]
mark.

her
18 REBECCA x BELCHER. [SEAL.]
mark.

MERCER COUNTY, *To wit:*

This day Robert D. Belchar & Chrispianos Belcher, parties to the annexed deed, dated the 23rd day of December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be their act and deed, and directed me to certify their acknowledgment to the clerk of Mercer county court that the deed may be recorded.

Given under my hand this 7th day of May, 1853.

G. P. BROWN, *J. P.*

MERCER COUNTY, *To wit:*

This day Rebecca Belchar, wife of Robert D. Belchar, and Rebecca Belchar, wife of Chrispianos Belcher, and parties to the within deed, bearing date the 23rd day of December, 1852, personally came before us, justicesses of the peace in said county, and, being examined by us privitealy and apart from their said husbands and haveing the deed explained to them, acknowledged the same to be their act and deed, and that *tha* had willingly signed it, and *tha* did not wish to retract it, and directed us to certify their said acknowledgments to the clerk of Mercer county court that said deed may be recorded.

Given under our hands this the 7th day of May, 1853.

GEO. P. BROWN, *J. P.*
ELI BAILEY, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belcher & wife and Chrispianos Belcher & wife to William H. Witten, conveying land, with a certificate of acknowledgment and privy examination before two justices annexed, was this day presented in court — ordered to be recorded.

Teste: W. F. HEPTINSTILL, *D. C.*

19 STATE OF WEST VA., *County of Mercer,* } *To wit:*

I, Samuel P. Pearis, clerk of the county court of said county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee copy, 60 cts.

S. P. P., *Clk.*

(Ex. "A No. 3" referred to in bill is as follows:)

This deed, made this fifth day of November, in the year of our Lord one thousand eight hundred and eighty-one (1881), between William H. Witten, of the county of Mercer, State of West Virginia, and Mary, his wife, and Winfield Scott Witten, of the said county, parties of the first part, and John Graham, Jr., of Pearisburg, county of Giles and State of Virginia, party of the second part, and Joseph I. Doran, of the city of Philadelphia, in the State of Pennsylvania, party of the third part, witnesseth: That the said parties of the first and second parts, as well for and in consideration of the premises *and* of the sum of one thousand five hundred dollars paid or to be paid unto the said parties of the first part by the said party of the third part as follows, viz., five hundred dollars cash, the receipt whereof is hereby acknowledged, the balance in two equal installments of five hundred dollars each in one and two years from the date hereof respectively, do grant unto the said party of the third part, his heirs and assigns, all that certain tract, piece, or parcel of land situate on the south side of the dividing ridge and on Simmons creek, in Mercer county aforesaid, and containing two hundred acres, more or less, bounded on the north by the tract of land next hereinafter described, on the east by the lands of Henry Sadler and lands of the heirs of Henry Walker, on the south by lands of G. W. Perdue, and on the west by other lands of the said W. H. & W. S. Witten, the balance of a larger tract of eleven hundred acres, hereinafter more particularly described, being the eastern part of the said large tract of eleven hundred *hundred* acres which Robert D. Belcher *et ux. et al.*, by deed dated December 23rd, 1852, and recorded in Mercer county, in Deed Book No. 3, page 523, &c., granted and conveyed unto the said W. H. Witten in fee; and a portion of the lands of the — W. H. Witten having been seized, taken in execution, and sold under a certain proceeding instituted against him in the circuit court of Mercer county aforesaid at the suit of the Bank of Princeton, the said W. H. Witten purchased the same and is about to receive a deed therefor; also all the full, equal, undivided moiety or half part of a certain other tract of land, containing one hundred and fifty acres, more or less, adjoining the above, situate on the dividing ridge and Simmons creek and bounded on the north by the lands of the Maitland survey, on the east by lands of Straley and others, on the south by lands of Henry Sadler and the tract of land above described, and on the west by lands of A. G. Belcher and Henry Swader—

Being the same tract of land which William Payne and Julia Ann, his wife, by deed dated August 6, 1852, and recorded in Mercer county, in Deed Book No. 3, page 459, &c., granted and conveyed unto the said William H. Witten and Robert Graham in fee in equal moities as tenants in common; and the said parties of the

first part, by a certain contract or agreement in writing, dated May 20, 1881, and recorded in the said Mercer county, agreed to sell said lands to the said John Graham, Jr., who has joined in the execution of this present deed for the purpose of granting and conveying all his right, title, and interest therein.

21 The above consideration agreed to be paid is at the rate of four dollars per acre, and if, on correct survey of said lands, which it is hereby agreed shall be made, the number of acres should exceed or should be less than that herein given, the consideration money is to be proportionately increased or diminished and the difference added to or substracted from the deferred payments; and the said parties of the first part covenant that they will warrant generally the lands hereby conveyed; that they have the right to convey the same to the said party of the third part; that the said party of the third part shall have quiet possession of the said lands, and that they will execute such further assurances of the said lands hereby conveyed as may be requisite, and that they have done no act to incumber the same, excepting and reserving, nevertheless, to the said William H. Witten and Winfield Scott Witten a vendor's lien for the purchase-money, as above specified.

Witness the following signatures and seals.

WILLIAM H. WITTEN. [SEAL.]
her
MARY x WITTEN. [SEAL.]
mark.
WINFIELD SCOTT WITTEN. [SEAL.]
JOHN GRAHAM, JR. [SEAL.]

Sealed and delivered in the presence of—
DAVID K. THURMAN.
WM. McGEORGE, JR.

STATE OF WEST VIRGINIA, } *ss:*
County of Mercer, }

I, James O'Keeffe, a notary public for the said county of Mercer, in the State of West Virginia, do certify that William H. Witten, Winfield Scott Witten, and John Graham, Jr., whose names

22 are signed to the writing above, bearing date on the fifth day of November, A. D. 1881, have acknowledged the same before me in my county aforesaid.

Given under my hand this fifth day of November, A. D. 1881.

JAMES O'KEEFFE,
Notary Public.

STATE OF WEST VIRGINIA, } *ss:*
County of Mercer, }

I, James O'Keeffe, a notary public for the said county of Mercer, in the State of West Virginia, do certify that Mary Witten, the wife of William H. Witten, whose names are signed to the within writing, bearing date the fifth day of November, A. D. 1881, personally appeared before me in the county aforesaid, and, being examined by

me privily and apart from her husband and having the writing aforesaid fully explained to her, the said Mary Witten acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this fifth day of November, A. D. 1881.

JAMES O'KEEFFE,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

NOVEMBER 19TH, 1881.

This day the foregoing writing, together with the certificates thereon endorsed, was presented in said office and duly admitted to record.

Teste: C. R. McNUTT, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

23 I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $1.25.

(Ex. No. 4 referred to in the bill is as follows:)

This deed, made this first day of January, in the year of our Lord one thousand eight hundred and eighty-three (1883), between Joseph I. Doran, of the city of Philadelphia, State of Pennsylvania, attorney-at-law, and Ida W., his wife, parties of the first part, and the Southwest Virginia Improvement Company, a corporation formed and existing under and by virtue of the laws of the Commonwealth of Virginia a (certified copy of the charter of said corporation having been duly filed and recorded in the clerk's office of the county court of the county of Mercer, State of West Virginia), party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, paid unto the said parties of the first part by the said parties of the second part, do grant unto the party of the second part, its successors and assigns, all those five certain tracts, pieces, or parcels of land situate, lying, and being in the county of Mercer, State of West Virginia aforesaid, on the waters of Bluestone river, and severally and respectively bounded and described according to recent surveys made thereof by William L. Graham and William R. Graham, Esquires, as follows:

No. 1. Beginning at a small hickory and two sour-woods in a line of land of William H. and W. Scott Witten, thence with the same north ten and one-quarter degrees west three hundred and thirty-four

poles to six chestnuts in a line of land of Andrew Green
24 Belcher; thence with one line of the same north fifty degrees east one hundred and six poles to a spruce pine and white oak, where two spruce pines and two white oaks were called for on the east bank of Simmons creek, a corner also of lands purchased by the said Joseph I. Doran from the said William H. and W. Scott Witten and Samuel M. Dangerfield; thence down said creek south forty-nine and one-half degrees east twenty-two poles, south fifty-eight degrees east twenty-six poles, south forty-two degrees east twenty-four poles, south thirty-one degrees east twenty-two poles, south fifty-four degrees east sixty-two poles, south twenty-three and three-quarters degrees east sixty-six poles to a buckeye and dead beech on the east bank of said creek at the mouth of a small branch, corner of land of Henry Sadler; thence with his line, still down said creek, south ten degrees east forty-six poles, south twenty degrees east sixty poles, south fifty-two degrees east twenty poles to a beech, where two were called for on the west bank of said creek, a corner of land purchased by the said Joseph I. Doran from the heirs of Henry Walker, deceased; thence by lands of —— —— south sixty degrees west two hundred and twenty-two poles to the place of beginning, containing three hundred and eighty-two acres and one hundred and twelve perches, more or less, being the same premises which William H. Witten *et ux. et al.*, by deed dated November 5, 1881, recorded in the clerk's office of Mercer county aforesaid, in Deed Book No. 10, page 70, &c., granted and conveyed, *inter alia*, unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money; and said land having been found by the resurvey provided for in said deed to contain three hundred and eighty-two acres and one hundred and twelve perches as aforesaid instead of two hundred
25 acres, as therein stated, and certain payments having been made on account of said vendor's lien, there still remains unpaid the sum of, say, four hundred and twenty-six dollars and twelve cents.

No. 2. Beginning at a white oak on the point of a spur, a corner of land of Woddy C. Belcher, thence with eight lines of the same along the top of a spur north twelve degrees west twenty-five poles to a chestnut, north twenty-six degrees west thirty-four poles to a small chestnut and sour-wood, north twenty-nine and one-half degrees east thirty poles to a stake, north eleven and three-quarters degrees east thirty-two poles to a stake, north seventeen degrees west twelve and one-half poles to a small sour-wood, north thirty-five degrees west fourteen poles to a white oak, north sixty-two and three-quarters degrees west twenty-five poles to a small chestnut oak and a locust; thence, leaving said ridge, north thirty-five degrees west forty-eight poles to a b-azed beech by a branch; thence down said branch north sixty degrees east fourteen poles, north eighty-three degrees east forty-eight poles, south eighty-one degrees east thirty-six poles, north fifty-seven and one-half degrees east eleven and one-half poles to a point on Simmons creek; thence down the same north eighty-three degrees east eighteen poles, south fifty and

one-half degrees east twenty-four poles, south thirty-three degrees east twenty-seven poles, south forty-three degrees east thirty-six poles, south nine degrees east twenty-one poles to a spruce pine stump on the west bank of said creek, a corner of land of Benjamin McNutt; thence with his line south sixty-four and one-half degrees west ninety-seven poles to a hickory, ash, and black oak on the north bank of Bluestone river, a corner of land of Isaac Green Belcher, and with one line of same south twenty-eight and three-quarters degrees west seventy-six poles to the place of beginning, containing one hundred and nine acres and forty-one perches,
26 more or less (being the same premises which William D. Hill *et al.*, by deed dated November 1, 1881, recorded as aforesaid in Deed Book 10, page 66, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving unto the said William D. Hill a vendor's lien for the unpaid balance of purchase-money, which has since, by deed dated November 18, 1882, recorded as aforesaid in Deed Book No. 11, page 159, been fully released and discharged of record).

No. 3. Beginning at a white oak and a spruce pine on the east bank of Simmons creek where two white oaks and two spruce pines were called for, a corner of land purchased by the said Joseph I. Doran from William H. and W. Scott Witten, and a corner also of land of Andrew Green Belcher; thence with two lines of the latter up said creek north forty-eight degrees west sixty-two poles to opposite a white oak, north twenty-eight and one-quarter degrees west fourteen poles to a small chestnut at the mouth of a small branch, a corner also of land of Henry and Catherine Swader; thence with two lines of the same north forty degrees east forty-six poles to two white oaks and two hickories on both sides of the road on top of the dividing ridge, north fifty degrees west eighteen poles to a red oak and two chestnut oaks, north seventy degrees east one hundred and seventy-four poles to two spruce pines, three white oaks, and poplar on both sides of a branch at the head of the middle fork of Simmons creek, a corner of land of Obadiah Belcher; thence down said creek south twenty-one and one-half degrees east seventy-five poles, south forty-three and one-half degrees east eight poles, south thirty degrees east thirty-eight poles, south five degrees east forty-four poles to two spruce pines and a white oak about twelve yards south of the branch; thence west one hundred and thirty-eight poles to
27 the place of beginning, containing one hundred and four acres and one hundred and five perches, more or less.

(Being the same premises one undivided one-half of which Samuel M. Dangerfield *et ux. et al.*, by deed dated November 17, 1881, and recorded as aforesaid in Deed Book 10, page 82, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, which has since, by deed dated November 20, 1882, and recorded as aforesaid in Deed Book No. 11, page 102, been fully released and discharged of record, and the remaining undivided one-half of which W. Scott Witten *et al.*, by deed dated November 5, 1881, and recorded as aforesaid in Deed Book No. 10, page 70, &c., granted and conveyed unto the said

Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, of which, after deducting payments made on account, there still remains unpaid the sum of, say, one hundred and six dollars and fifty-three cents.)

No. 4. Beginning at a birch and lynn on Simmons creek, a corner of land purchased by the said Joseph I. Doran from William H. and W. Scott Witten, thence north sixty-one and one-half degrees east four hundred and twenty-eight poles, crossing the east fork of Simmons creek at one hundred and twenty-four poles and passing a white oak, marked "A. W.," at two hundred and eighty poles, to two spruce pines, marked by William L. Graham as the corner near the forks of Flipping creek; thence down said Flipping creek south fifty-three and three-quarters degrees east ninety poles, south eighty-three and one-half degrees east forty poles, south fifty-three and one-quarter degrees east twenty poles to a buckeye, spruce pine, and fallen maple at the mouth of Spruce Pine branch, which branch is also known as the Spring branch; thence up said branch
28 south forty degrees west eighty-four poles to two buckeyes in said branch (one down), south one and one-half degrees west fifty-four poles to a chestnut, chestnut oak, and small hickory (buckeye also called for, but gone) on top of a ridge by the road, south twenty-six degrees west ninety-four poles to a chestnut oak on top of the ridge where buckeye was called for, but gone, north sixty-six and one-quarter degrees west seventy-two poles to two white oaks and a poplar by a path, south seventy-eight degrees west thirty-two poles to a gum and white oak on the point of a spur, south thirty-one and one-half degrees west two hundred and forty-six poles down the Doe branch to Simmons creek; thence up said creek north twenty-three and one-half degrees west fifty-six poles, passing the mouth of Doe branch at forty-six poles; north fifty-seven degrees west forty-five poles, north twenty-eight poles, north forty-three degrees west eighteen poles, north twenty-eight degrees west fifty-seven poles, passing forks of Simmons creek at fifty-five poles; north sixty degrees west forty-one poles, north twenty-one degrees west forty-eight poles, north fifty degrees west twenty-two poles to the place of beginning, containing six hundred acres and ninety-seven perches (being the same premises which George Snidow *et ux. et al.*, by deed dated November 14, 1881, and recorded as aforesaid in Deed Book No. 10, page 190, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the balance of unpaid purchase-money, of which there still remains unpaid the sum of four hundred and twenty dollars and ninety-one cents).

No. 5. Beginning at a spruce pine and birch on the middle fork of Simmons creek, a corner of Henry Sadler, and with his lines north seventy-six and one-half degrees east one hundred and twenty-six poles, crossing hollows and spurs, to a chestnut and chest-
29 nut oak near a plantation road, south eighty and one-half degrees east twenty-two poles, crossing said road, to a maple and two speckled oaks on the point of a ridge; north eighty-nine and one-half degrees east thirty-two and one-half poles down a ridge to a spruce pine on the east fork of Simmons creek; thence

with said Sadler's lines north twenty-two and one-half degrees east nineteen poles up said fork to a white oak and spruce pine; thence, leaving said fork, north fifty-eight and three-quarters degrees east seventy-three and three-quarters poles to a chestnut oak near the wagon road; thence north seventy-eight and one-half degrees east forty-one and one-quarter poles, crossing said road, to two small speckled oaks and a black oak on top of a spur, north eighty-one and one-quarter — east twenty-nine poles to a chestnut and dead white-oak, south fifty-five and three-quarters degrees east ninety-three poles down a ridge to two spruce pines and a poplar on the west bank of Flipping creek, near the mouth of a west fork of said creek; thence up the same with its meanders north four and one-quarter degrees west six poles, north twenty-one and one-half degrees west fifty-five poles, north forty-seven and one-quarter degrees west nine and one-half poles, north seventy-three degrees west sixteen and one-quarter poles, north forty-four and three-quarter degrees west eight and one-quarter poles, north fifty-one degrees west thirty-three poles, north thirty-six degrees ten minutes west fifteen and one-half poles, north fifty and one-half degrees west thirty-six poles, passing the mouth of the north fork of Flipping creek at twenty-six poles; north seventy-seven and one-half degrees west thirty-one poles, north fifty-two degrees west twenty and one-half poles, north seventy-one degrees west twelve poles, north forty-three and one-half degrees west twenty-four poles, north fifty-two degrees west sixteen and one-half poles, north forty-two and one-half degrees west seven poles to the mouth of a north branch, north eighty and one-quarter degrees west twelve and one-half poles, north forty-eight degrees west ten and three-quarters poles to the mouth of a small north branch; thence west fifteen and three-quarters poles, north forty-seven and one-half degrees west twenty-four and three-quarters poles, passing mouth of a small south branch at five poles; north fifty-four and one-quarter degrees west sixteen and one-half poles, passing mouth of north fork at ten and one-quarter poles; south eighty-nine degrees west nine poles, north eighty-one degrees west sixteen and three-quarters poles to a birch; thence, leaving said creek, south seventy degrees thirty-five minutes west one hundred and twenty-four poles, crossing the wagon road on top of Flipping — at forty poles, to three white oaks, two spruce pines, and a poplar on both sides of the middle fork of Simmons creek, a corner of a tract of land purchased by the said Joseph I. Doran from Witten and Dangerfield *et al.;* thence down said creek south twenty-one and one-half degrees east seventy-five poles, south forty-three and one-half degrees east eight poles, south thirty degrees east thirty-eight poles, south five degrees east forty-four poles to two spruce pines and a white oak on a steep bank, a corner of said tract purchased from Witten and Dangerfield *et al.;* thence, leaving the same and down said creek, south thirty-two degrees west thirty-eight and one-quarter poles, south five degrees east seventeen and three-quarters poles, south eight degrees west seven poles, south twelve and one-half degrees west eight poles to the place of beginning, containing three hundred and sixty-nine and

thirty-five one-hundredths acres, more or less (being the same premises which Samuel K. Kille, executor of the last will and testament of Stacy B. Barcroft, deceased, *et al.*, by deed dated March 7, 1882, and recorded as aforesaid in Deed Book No. 10, page 213, &c., granted and conveyed unto the said Joseph I. Doran in fee).

No. 6. Also five full, equal, undivided eighths part of one hundred and fifty acres of land (being a part of a large tract of land conveyed by Robert D. Belcher *et ux. et al.* to William H. Witten by deed dated December 23, 1852, and recorded as aforesaid in Deed Book No. 3, page 523, &c.) situate, lying, and being in the said county of Mercer, on the waters of Bluestone river, bounded on the north by a tract of one hundred and forty-eight acres sold by the said William H. Witten to James Perdue, on the east by a tract of three hundred and eighty-two acres and one hundred and twelve perches sold by the said William H. Witten *et ux. et al.* to the said Joseph I. Doran and by lands of H. D. Belcher, on the south by a tract of five hundred acres sold by the said William H. Witten to Jordan Nelson, and on the west by land of Silas Perdue, the remaining undivided three-eighths part of said tract having been heretofore sold and conveyed by the said William H. Witten *et al.* to James D. Johnston *et al.* (being the same undivided interest which William H. Witten *et ux. et al.*, by deed dated November 5, 1881, recorded as aforesaid in Deed Book No. 10, page 88, &c., granted and conveyed, *inter alia*, unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, of which there still remains unpaid the sum of $106.53, provided the acreage shall correspond to that herein stated).

All the coal and other minerals within or underlying all those five certain tracts, pieces, or parcels of land situate, lying, and being in the county of Mercer and State of West Virginia, on the waters of Bluestone river, and severally and respectively bounded and described according to surveys recently made thereof by William L. and William R. Graham, Esquires, as follows:

No. 7. Beginning at a gum, a corner of land of Andrew Green Belcher, thence with seven lines of the same north eighty-six degrees west thirty-five poles to a locust, north five and one-half degrees east eighteen poles with a hollow to a stake in a hollow, north fifty-two degrees east ten poles to a bunch of willows in a drain, north eight degrees west thirty poles to a small chestnut oak on top of a hill; thence with the top of a ridge north thirty-four degrees east four poles to a small hickory in the point of a ridge, north twenty-three degrees west twenty-two poles to a dogwood, north twenty-two and one-half degrees east four and one-half poles, more or less, to a point in a line of said land of Andrew G. Belcher and in a line of land *of land* of Margaret Davidson; thence south forty-three degrees west one hundred and twenty-three poles, more or less, to a chestnut oak and dead red-oak on the top of a spur near the path, south twenty-one degrees east thirty-nine poles to a small stooping chestnut below a small cliff on the top of a spur, south sixty-two degrees

east forty poles to a double chestnut oak on a spur east of the road, and north fifty degrees east ninety-seven poles to the place of beginning, containing forty-eight acres and one hundred and forty-nine perches, more or less (being the same premises which Winfield Scott Witten *et al.*, by deed dated November 5, 1881, recorded as aforesaid in Deed Book No. 10, page 68, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, which has since been fully paid off and discharged, though not released of record).

No. 8. Beginning at a gum, a corner of land of W. Scott
33 Witten, thence north fifty degrees east one hundred and forty-one poles, passing six chestnuts, a corner of land purchased by the said Joseph I. Doran from W. Scott and William H. Witten, at thirty-five poles, to a white oak and a spruce pine, where two white oaks and two spruce pines were called for, on the east bank of Simmons creek, a corner of land purchased by the said Joseph I. Doran from the said W. Scott and William H. Witten and Samuel M. Dangerfield; thence with two lines of the same north forty-eight degrees west sixty-two poles to opposite a white oak, north twenty-eight and one-half degrees west fourteen poles to a small chestnut at the mouth of a small branch, a corner also of land of Henry W. and Catherine G. Swader; thence with four lines of the same south fifty-nine degrees west twenty-five and one-half poles to a chestnut oak on the point of a spur, south twenty-nine degrees west eighteen poles to a chestnut, south fifty-nine degrees west thirty-four poles to a small dogwood, south seventy-three degrees west ten and one-half poles to a white oak, a corner also of land of Jane Davidson; south fifty degrees west eleven and one-half poles to a white oak, south twenty-two and one-half degrees west nine poles, passing a corner of land of W. Scott Witten at four and one-half poles, to a dogwood; thence with six lines of the said Witten's land south twenty-three degrees east twenty-two poles to a small hickory on the point of a ridge, south thirty-four degrees west four poles to a small chestnut on the top of a hill, south eight degrees east thirty poles to a bunch of willows in a drain, south fifty-two degrees west ten poles to a stake in a hollow, south five and one-half degrees west eighteen poles to a locust, south eighty-six degrees east thirty-five poles to the place of beginning, containing sixty-nine acres and seventy-seven perches, more or less (being the same prem-
34 ises which Andrew Green Belcher *et ux. et al.*, by deed dated November 17, 1881, and recorded as aforesaid in Deed Book No. 10, page 74, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the balance of unpaid purchase-money, which has since, by deed-poll dated November 20, 1882, and recorded as aforesaid in Deed Book No. 11, page 100, been fully released and discharged).

No. 9. Beginning at a small chestnut at the mouth of a small branch, a corner of land of Andrew Green Belcher, and also of land purchased by the said Joseph I. Doran from William H. and W. Scott Witten and Samuel M. Dangerfield, thence with two lines of the latter north forty degrees east forty-six poles to two white oaks

and two hickories on both sides of the road on the dividing ridge, north fifty degrees west eighteen poles to two chestnut oaks on a spur, south seventy-two and one-half degrees west sixty-five poles to three chestnut oaks on the top of a spur, south twenty-two and one-half degrees west five poles to a white oak, a corner of land of Andrew Green Belcher; thence with four lines of the same north seventy-three degrees east ten and one-half poles to a small dogwood, north fifty-nine degrees east thirty-four poles to a chestnut, north twenty-nine degrees east eighteen poles to a chestnut oak on the point of a spur, and north fifty-nine degrees east twenty-five and one-half poles to the place of beginning, containing twenty-five acres and ninety-three perches, more or less (being the same premises which Henry W. Swader and Catherine G., his wife, and John Graham, Jr., by deed dated November 17, 1881, and recorded as aforesaid in Deed Book No. 10, page 85, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, which has since, by deed dated November 23, 1883, and recorded as aforesaid in Deed Book No. 11, page 134, been fully released and discharged of record).

35 No. 10. Beginning at a point on the bank of Bluestone river south ten degrees east two poles from a small white oak, a corner of land of Wiley G. Hill, thence down said river south seventy-five degrees east fifty-four poles, south fifty-two degrees east fifty-six poles, south fifty-eight degrees east twenty-eight poles to opposite a poplar and a buckeye stump on the bank of said river, corner to land of Isaac Green Belcher; thence with a line of same north thirty-four and three-quarters degrees east twenty-six poles to a white oak on the point of a spur, a corner of land purchased by the said Joseph I. Doran from William D. Hill; thence with eight lines of the same, with the top of a spur, north twelve degrees west twenty-five poles to a chestnut, north twenty-six degrees west thirty-four poles to a small chestnut and sour-wood, north twenty-nine and one-half degrees east thirty poles to stake, north eleven and three-quarters degrees east thirty-two poles to a stake, north seventeen degrees west twelve and one-half poles to a small sour-wood, north thirty-five degrees west fourteen poles to a white oak, north sixty-two and three-quarters degrees west twenty-five poles to a small chestnut oak and locust; thence, leaving said ridge and down a spur, north thirty-five degrees west forty-eight poles to a small blazed beech by a branch; thence up said branch south sixty degrees west six poles to opposite a large spruce pine, north sixty-seven and one-half degrees west thirty-three poles to the forks of a branch, a corner of land of H. D. Belcher and land of Felix S. Hill; thence with one line of the latter south fifty-two and one-quarter degrees west seventy-one poles to a large chestnut by a grave-yard, a corner also of land of Wiley G. Hill, and thence with one line of the same south ten degrees east one hundred and twenty poles to the place of beginning, containing one hundred and thirty-two acres

36 and ninety-five perches, more or less (being the same premises which Waddy C. Belcher *et ux. et al.*, by deed dated November 18, 1881, and recorded as aforesaid in Deed Book No. 10,

page 72, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the balance of unpaid purchase-money, which has since, by deed-poll bearing date the twentieth day of November, A. D. 1882, recorded as aforesaid in Deed Book No. 11, page 101, been fully released and discharged of record).

No. 11. Beginning at a point south thirty-four degrees forty-five minutes west from a hickory stump on the north bank of Bluestone river, thence north thirty-four degrees forty-five minutes east thirty-two and one-half poles to a black pine and a speckled oak on a south hill-side, north fifty-two degrees thirty minutes west one hundred and ninety and one-half *pines*, crossing hollows and spurs, to two white oaks near the forks of the two right-hand prongs of Bell's branch, south fifty-six degrees west one hundred and thirty-seven poles to where a poplar, two chestnut oaks, and a chestnut were called for, but gone (marked a chestnut oak and two small chestnuts on top of a ridge), south thirty-eight degrees thirty minutes east one hundred and sixty-seven poles to the middle of Bluestone river, (marked a small white oak on north bank); thence down with said river south eighty-one degrees forty-five minutes east three poles, south seventy-one degrees thirty minutes east thirty-seven and one-half poles, east seventeen and one-half poles, north sixty-four degrees forty-five minutes east seven poles, north twenty-two degrees fifteen minutes west seventeen and one-half poles, north forty-three degrees thirty minutes west seven and one-half poles, north forty-five degrees west fourteen and one-quarter poles, north forty-five degrees forty-five minutes west twenty-one poles,
37 north forty-two degrees thirty minutes west twenty-five poles, north thirty-one degrees thirty minutes west ten and three-quarters poles, passing mouth of Swader's Spring branch at nine poles; north eleven degrees forty-five minutes west sixteen poles, north forty-five degrees east nine and one-quarter poles, north seventy-three degrees thirty minutes east twenty-four and one-half poles, south eighty-three degrees east ten poles, south sixty-two and one-half — east thirteen poles to the mouth of Bell's branch, south seventy-five and one-half degrees east twenty-three and three-quarters poles, north sixty-nine and one-half degrees east thirteen and one-half poles, north eighty-eight degrees forty-three minutes east five poles, south sixty-five degrees east ten poles, south twenty-three degrees thirty-two minutes east twelve poles, south forty-seven and three-quarters degrees east seven and one-half poles, north eighty-three and one-half degrees east fourteen and one-quarter poles, south seventy-seven degrees east fourteen and one-quarter poles, north eighty and one-half degrees east three and one-half poles to the place of beginning, containing one hundred and fifty-five acres and one hundred and forty-one perches, more or less (being the same premises which Robert Belcher *et ux. et al.*, by deed dated November 18, 1881, recorded as aforesaid in Deed Book No. 10, page 123, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, which has since, by deed dated November 21, 1882, recorded as aforesaid in

Deed Book No. 11, page 100, been fully released and discharged of record).

No. 12. All the coal and other minerals within or underlying all that certain tract, piece, or parcel of land, supposed to contain one hundred and fifty acres, more or less, situate in the county of
38 Mercer aforesaid, on the waters of Bluestone river, beginning at a chestnut at the foot of the grave-yard, thence with a straight newly marked line to Bluestone river; thence up the river with James Bell's line to the Mill branch, to a corner of said Bell's and Jordan Nelson's; thence up a little branch to the Lybrook line; thence, following said line, to a newly marked corner (a poplar agreed upon by the parties); thence a straight line to the division fence; thence with said fence and a row of cherry trees to the corner of the fence, and thence a straight line to the beginning (being the same premises which Wiley G. Hill *et ux. et al.*, by deed dated November 18, 1881, and recorded as aforesaid in Deed Book No. 10, page 77, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, the greater part of which balance has since been paid).

No. 13. All the coal and other minerals within or underlying all that certain tract, piece, or parcel of land, containing seventy-five acres, more or less, situate in the said county of Mercer, on the waters of Bluestone river, adjoining the lands of Henry Belcher and Wiley G. Hill, known as part of the John Bell survey, and more particularly described as follows: Beginning at the grave-yard, *on* a chestnut, running northward to Henry Belcher's line; thence with said line west to the Lybrook line, south to a poplar; thence east with a newly marked line, made by Isham Witten and the said Felix S. Hill, to the beginning (being the same premises which Felix S. Hill *et ux. et al.*, by deed dated November 18, 1881, and recorded as aforesaid in Deed Book No. 10, page 80, &c., granted and conveyed unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, the greater part of which balance has since been paid).

39 No. 14. The undivided five-eighths interests of, in, and to all the coal and other minerals within or underlying all that certain tract, piece, or parcel of land situate on both sides of the dividing ridge at the mouth of Laurel creek and lying mainly on the waters of Mill creek, in the county of Mercer aforesaid, bounded on the north by the lands of William B. Tabor, on the east by other lands of the said W. H. and W. S. Witten and by the lands of H. D. Belcher, Felix S. Hill, Wiley G. Hill, Reuben Lovings, and James Bell, and on the south by other land of the said W. H. Witten and by land of Jordan Nelson, and on the west by lands of Jordan Nelson, Silas Perdue, and James Perdue (being the same interest in said premises which the said William H. Witten *et ux. et al.*, by deed dated November 5, 1881, and recorded as aforesaid in Deed Book No. 10, page 88, &c., granted and conveyed, *inter alia*, unto the said Joseph I. Doran in fee, reserving a vendor's lien for the unpaid balance of purchase-money, of which there still remains unpaid the

sum of about $532.69, provided the acreage shall correspond to that herein stated.)

Together, as respects all of said bodies of coal and other minerals numbers seven, eight, nine, ten, eleven, twelve, thirteen, and fourteen, above described, with the right to mine, extract, remove, and take away the entire amount and body of said coal and other minerals without reservation or substitution and with all proper and reasonable rights and privileges for ventilating and draining such mines without being in any way liable for any damage or injury which may be done to said land or to any waters or water-courses therein or thereon by reason of the mining, extracting, and removing said coal and the ventilating and draining said mines and the manufacture of coke by the said party of the second part, its
40 successors or assigns, in such locality or localities as it or they may hereafter elect for that purpose, and generally freed, clear, and discharged of and from all servitude whatsoever to the land over said coal and minerals, and together also with the right to make and maintain roads, railroads, passages and ways, or tramways on said lands or through said coal and other minerals for the removal and transportation of said coal and minerals taken from this or other lands and for the transportation of material and generally as passage-ways and water-courses forever, together also with the right to lay water pipes over said land for the passage of water for mining and manufacturing purposes, and together, as respects said bodies of coal and minerals numbers seven, eight, nine, ten, eleven, twelve, and thirteen, above described, with the right to use the water and timber for mining purposes and the right to erect buildings and machinery on said respective tracts of land and the right to remove the same, reserving and excepting, however, unto Andrew Green Belcher, as respects said premises number eight, above described, all merchantable timber, under and subject, nevertheless, as respects certain of the tracts or pieces of land or bodies of coal and other minerals hereinbefore described and granted and conveyed, to the payment of the reduced vendor's lien for unpaid purchase-money due on the same respectively, as hereinbefore more particularly specified and recited; and the said Joseph I. Doran covenants that he will warrant specially the several tracts of land and bodies of coal and minerals and premises hereby conveyed, and that he will execute such further assurances of the same as may be requisite.

Witness the following signatures and seals.

JOSEPH I. DORAN. [SEAL.]
IDA W. DORAN. [SEAL.]

41 Sealed and delivered in the presence of—
JAMES H. PLOTTS.
WALTER C. RODMAN.

COMMONWEALTH OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss*:

I, Walter C. Rodman, a notary public for the Commonwealth of

Pennsylvania, residing in the city of Philadelphia, do certify that Joseph I. Doran, whose name is signed to the foregoing deed, bearing date the first day of January, A. D. 1883, has acknowledged the same before me in my county aforesaid.

And I do further certify that Ida W. Doran, the wife of the said Joseph I. Doran, whose name is also signed to the said deed, personally appeared before me in my county aforesaid, and, being examined by me privily and apart from her said husband and having the deed aforesaid fully explained to her, she, the said Ida W. Doran, acknowledged the same to be her act, — declared that she willingly executed the same and does not wish to retract it.

Given under my hand and notarial seal this fourteenth day of February, A. D. 1883.

[L. S.] WALTER C. RODMAN,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 2ND, 1883.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHARLES R. McNUTT, *Clerk.*

STATE OF WEST VIRGINIA, *County of Mercer,* } *To wit:*

42 I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 21st day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $5.50.

(EX. No. 5 referred to in the bill is as follows:)

This deed, made this thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three (1883), between the Southwest Virginia Improvement Company, a corporation formed and existing under and by virtue of the laws of the Commonwealth of Virginia (a certified copy of the charter of said corporation having been duly filed and recorded in the clerk's office of the county court of Mercer county, West Virginia), party of the first part, and Joseph I. Doran, of the city of Philadelphia, State of Pennsylvania, attorney-at-law, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, paid unto the said party of the first part by the said party of the second part, doth grant unto the said party of the second part, his heirs and assigns, with special warranty, all those five certain tracts, pieces, or parcels of land situate, lying, and being in the

county of Mercer, State of West Virginia aforesaid, on the waters of Bluestone river, and respectively designated and numbered "No. 1," "No. 2," "No. 3," "No. 4," & "No. 5" in a certain deed made and executed by Joseph I. Doran and Ida W., his wife, to the said The Southwest Virginia Improvement Company, bearing date the first day of January, A. D. 1883, and recorded in the clerk's office of the county court of Mercer county aforesaid, in Deed Book No. 11, page
43 291, &c., containing 382 acres and 112 perches, 109 acres and 41 perches, 104 acres and 105 perches, 600 acres and 97 perches, and $369\frac{35}{100}$ acres of land, more or less, respectively; also five full, equal, undivided eighths part of one hundred and fifty acres of land situate in said county, on said waters of Bluestone river, being the premises designated and numbered as "No. 6" in said mentioned deed; also all the coal and other minerals within or underlying all those seven certain tracts, pieces, or parcels of land situate, lying, and being in said county and on said waters of Bluestone river and being the premises "No. 7," "No. 8," "No. 9," "No. 10," "No. 11," "No. 12," and "No. 13," as designated and numbered in said mentioned deed, containing 48 acres and 149 perches, 69 acres and 77 perches, 25 acres and 93 perches, 132 acres and 95 perches, 155 acres and 141 perches, 150 acres, and 75 acres, more or less, respectively; and also the undivided five-eighths interest of, in, and to all the coal and other minerals within or underlying the premises designated and numbered "No. 14" in said mentioned deed, together, as respects all of said bodies of coal and other minerals above conveyed or mentioned and intended so to be, with all the rights and privileges specially given and granted in and by said above-mentioned deed of January 1, 1883, and appurtenant to the several tracts, respectively, reserving and excepting, as to the premises designated in the above-recited deed from Joseph I. Doran and in this present deed as "No. 3," as in said deed is particularly excepted and reserved.

In witness whereof the said party of the first part has caused these presents to be signed by its president, countersigned by its treasurer or cashier, and its corporate seal, attested by its secretary, to be affixed the day and date first above written.

THE SOUTHWEST VIRGINIA IMPROVEMENT COMPANY,
By JOHN P. ILSLEY, *President.*

44 Sealed and delivered in the presence of—
WM. McGEORGE, JR.
J. LUDEWIG KOETHEN, JR.

Countersigned by—
EDWARD J. COLLINS,
Treasurer or Cashier.

Attest: [L. S.] EDWARD J. COLLINS, *Secretary.*

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I, William McGeorge, Jr., a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, do certify that John P. Ilsley, president of the Southwest Virginia Improvement Company, whose name is signed to the foregoing deed, dated December 13, A. D. 1883, has acknowledged the same before me in my county aforesaid, and has further acknowledged and declared that he executed the same as president of said company and for and on behalf of said company as its act and deed, having as such president signed his name thereto and affixed the corporate seal of said company to the said deed, and that he has caused the same to be countersigned by Edward J. Collins, the treasurer or cashier of said company, and has caused the seal of said company so affixed to be duly attested by Edward J. Collins, the secretary of said company; all of which has been done by him under and pursuant to the authority conferred on him by the board of directors of the said company.

Given under my hand and notarial seal this thirteenth day of December, A. D. 1883.

[L. S.] WM. McGEORGE, JR.,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 20, 1883.

This day the foregoing deed was presented in said office and, together with the certificates thereon endorsed, duly admitted
45 to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

STATE OF WEST VA., } *To wit:*
County of Mercer, }

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 21st day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for cop., $1.10.

Ex. marked B No. 1, referred to, is in the words & figures following, to wit:

This deed, made this second day of April, in the year 1885, between Chrispianos Belcher, of the one part, and Joseph I. Doran, of the other part, —: Whereas on the 12th day of May, 1842, Obadiah Belcher sold and conveyed unto the said Chrispianos Belcher 1,500 acres of land, more or less, situate on the waters of Bluestone river, in Mercer county, State of West Virginia, said deed of record in the clerk's office of the county court of said county, in Deed Book

No. 2, page 212, same being part of twenty-five hundred acres conveyed to said Obadiah Belcher by James Hector; and whereas on the — day of ——, 1844, the said Chrispianos Belcher, for and in consideration one horse delivered him by the said Robert D. Belcher, sold unto the said Robert D. Belcher a certain part or parcel of said 1,500 acres of land, containing by estimation about (800) eight hundred acres, and bounded as follows, to wit: Beginning at two birches on Simmons creek, thence up said creek and with William Miller's line and the meanders of the creek; thence leaving said creek with said Miller's line south fifty-five degrees west 414 perches, passing through the six chestnuts to a double birch on the
46 west line of the Wilson Cary Nichols 500,000-acre survey as run by one —— Coleman; thence with said west line south twenty-seven degrees east — poles to said Robert D. Belcher's 1,500 acres of land conveyed to him by the said James Hector; thence with said Robert D. Belcher's line to the beginning; and afterwards, to wit, on the — day of ——, 1844, said Chrispianos Belcher executed, acknowledged, and delivered to said Robert D. Belcher a deed to all that certain part, parcel, or portion of said boundary of 800 acres of land, containing by estimation (200) two hundred acres, more or less, hereinafter mentioned, described, and conveyed, lying east of the west line of said Nichols survey as run by one Patrick Lybrook, running from the mouth of Laurel creek to the six chestnuts and beyond, said deed not of record and the original deed lost; and whereas on the 23rd day of December, 1852, said Robert D. Belcher sold and conveyed to William H. Witten, with covenants of special warranty, all that portion of said 800 acres and said Robert D. Belcher's 1,500 acres lying between the said Coleman and Lybrook lines and known as the disputed land, in which said deed the said Chrispianos Belcher joined, not having previously conveyed his portion of said disputed land to said Robert D. Belcher by reason of said dispute, said deed of record in said clerk's office, in Deed Book No. 3, page 523, and on the same day said Robert D. Belcher sold and conveyed to said William H. Witten the said 200-acre tract conveyed by said Chrispianos Belcher to said Robert D. Belcher aforesaid, said deed of record in Beed Dook No. 3, page 522; and whereas on the (5th) fifth day of November, 1881, said William H. Whitten and others sold and conveyed said 200 acres to said Joseph I. Doran, who is now the equitable owner thereof, said deed of record in said clerk's office, in Deed Book No. 10, page 70, &c.:

47 Now, therefore, this indenture witnesseth: That, for and in consideration of the premises, the said Chrispianos Belcher *do* grant unto the said Joseph I. Doran, with covenants of special warranty, all that said certain tract or parcel of land, situate on the waters of Bluestone river, in the county of Mercer, in the State of West Virginia, conveyed by me to the said Robert D. Belcher as aforesaid, containing (200) two hundred acres, more or less, and bounded as follows, to wit: Beginning at (2) two birches on Simmons creek, thence up said creek with William Miller's line and the meanders of the creek to William Miller's survey; thence with the

same, leaving the creek, south fifty-five degrees west (S. 55 W.) (120) one hundred and twenty poles to the six chestnuts, corner to the said Miller's survey; thence south thirty-five degrees east (S. 35 E.) (310) three hundred and ten poles to a double and single poplar, corner to said Robert D. Belcher's 1,500 acres, and with line of same about north forty degrees east (N. 40 E.) 250 poles to the beginning. The above description of said 200 acres of land given according to the lines, metes, and bounds then as they were known and given in the year 1852. Interlined "conveyed" before signed.

Witness the following signature and seal.

CHRISPIANERS BELCHER. [SEAL.]

STATE OF MISSOURI, } *ss:*
County of Montgomery, }

I, Seneca W. Hammack, a notary public in and for the county of Montgomery, in the State of Missouri, hereby certify that Chrispianers Belcher, whose name is signed to the writing hereto annexed, bearing date April the second day, 1885, personally appeared before me in the county and State aforesaid and acknowledged the same to be his act and deed.

Given under my hand and official seal this the second day
48 of April, anno Domini 1885.

[L. S.] SENECA W. HAMMACK,
Notary Public, Montgomery County, Missouri.

My term as notary will expire October 12th, 1885.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MAY 14TH, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

I hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand May 14th, 1885.

SAM'L P. PEARIS,
Clerk Mercer County Court, West Va.

Fee for copy, $1.50.
S. P. P., *Cl'k.*

(Ex. "B No. 2," referred to in the bill is as follows:)

This deed, made this 18th day of October, 1884, between Chrispianos Belcher, of the county of Montgomery, State of Mo., party of the first part, and Geo. W. Belcher, of the county of Mercer, State of W. Va., party of the second part, witnesseth: That, for and in consideration of seventy-five dollars paid in hand and other valuable

considerations, the receipt whereof is hereby acknowledged before the signing and sealing of this deed, — *do* grant, sell, and convey in fee simple unto Geo. W. Belcher a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer, State of W. Va., on the waters of Simmons —, a branch of Bluestone river, and being a part of a survey purchased by Obadiah Belcher of Jas. Hector
49 in the year 1842 and a portion of a tract deeded by Obadiah Belcher to Chrispianos Belcher and bounded as follows, to wit: beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence north 50 E. 112 poles to a white oak and two pines on a branch of Simmons —, corner to Witten and Graham-Payne tract; north 85 E. 134 poles with the Payne line to two pines & a white oak on another branch of Simmons —, corner to 400 acres deeded by said Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meand's thereof to the beginning; and the said party of the first part *do* hereby covenant with the party of the second part that he will warrant and defend the property hereby conveyed from him and his heirs forever, with all its appertenances.

Witness the following signature and seal.

CHRISPIANOS BELCHER. [SEAL.]

STATE OF MISSOURI, *Montgomery County,* } *ss:*

Be it remembered that Chrispianos Belcher, who is personally known to the undersigned, notary public within and for the county of Montgomery and State of Missouri, as the person whose name is subscribed to the above and foregoing deed or instrument of writing as a party thereto, — and acknowledged the same to be his voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this October 18, 1884.

My term as notary public will expire October 12, 1885.

[L. S.] SENECA W. HAMMACK,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

OCTOBER 29, 1884.

50 This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

STATE OF WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county,

W. Va., do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 24th day of January, 1885.

SAM'L P. PEARIS, *Clerk.*

(Ex. "B No. 3" referred to in the bill is as follows:)

This deed, made this the 4th day of December, 1884, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and Newton L. Reynolds, of the county and State aforesaid, of the second part, witnesseth: That, for and in consideration of the sum of sixty-six dollars and ten cents, the receipt of which is hereby acknowledged by the parties of the first part, and other valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part the undivided five-eighths part of the following tract or boundary of land, situate and being in the county of Mercer and State of West Virginia, on the waters of Simmons creek, a branch of Bluestone river, and being the same tract or boundary of land conveyed by Chrispianos Belcher to George W. Belcher by deed bearing date on the 18th day of October, 1884, and the same tract or boundary of land conveyed by R. B. McNutt, commis-
51 sioner of school lands for Mercer county, to George W. Belcher by deed bearing date on the 3rd day of December, 1884, and bounded as follows, to wit: Beginning at two birches on the bank of Simmons creek in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obediah Belcher and a corner to the William H. Witten land, and with a line of the said Witten land N. 50 40" W. 85.40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of said ridge, to six dead chestnuts on said ridge, a corner to A. G. Belcher's land, and with a line of same N. 49 10" E. 25.00 chains, crossing a branch of Simmons creek at 15.00 chains, to a white oak and two spruce pines on another branch of said Simmons creek; N. 89 10 E. 35.25 chains, crossing hollows and ridges and the middle fork of said Simmons creek, to two spruce pines and a white oak about ¾ chain from said forks; thence down Simmons — with the meanderings thereof S. 33 30 W. 9.20 chains, S. 3 40 W. 8.19 chains to a spruce pine, a corner to Henry Sadler's land, and with said Sadler's line continuing down said Simmons creek S. 1 30 E. 5.56 chains, S. 26 W. 3.33 chains, S. 27 E. 5.52 chains, S. 15 30 E. 4.49 chains, S. 22 W. 9.00 chains, S. 9 30 E. 3.57 chains, S. 17 E. 2.10 chains, S. 12 E. 3.21 chains, S. 24 30 E. 10.77 chains, S. 8 30 E. 6.71 chains, S. 46 E. 4.72 chains, S. 5 30 E. 83 links to the beginning, said boundary containing, by recent survey, one hundred and eighty-five acres; and the said parties of the first part covenant with the party of the second part that they will warrant specially the title to the property hereby conveyed:

To have and to hold the said real estate and premises unto the said party of the second part, his heirs and assigns forever.

Witness the following signatures and seals.

GEO. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

52 WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that George W. Belcher, whose name is signed to the writing above, bearing date on the 4th day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER, *N. P.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the writing above, bearing date on the 4th day of December, 1884, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having the said writing fully explained to her, she, the said Mary Belcher, acknowledged the said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER,
Notary Public, Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6TH, 1884.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

53 WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, W. Va., do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 24th day of January, 1885.

SAM'L P. PEARIS, *Clerk.*

(Ex. "B No. 4" referred to in the bill is as follows:)

This deed, made this 25th day of February, 1885, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer

and State of West Virginia, parties of the first part, and P. H. Rorer, of Roanoke, Virginia, party of the second part, witnesseth: That the said George W. Belcher and Mary Belcher, his wife, for and in consideration of the sum of six thousand three hundred and ninety-three dollars and seventy-five cents, five hundred dollars, part of said sum, in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the residue of said sum to be paid hereafter, as evidenced by bonds executed by the said P. H. Rorer to said Geo. W. Belcher for the same, do hereby grant, bargain, sell, release, and confirm, with covenants of general warranty of title, to the said P. H. Rorer and his heirs and assigns forever three-eighths ($\frac{3}{8}$), undivided, of a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, in the county of Mercer and State of West Virginia, it being the same tract five-eighths ($\frac{5}{8}$), undivided, of which has heretofore been conveyed by the said parties of the first part to N. L. Reynolds, and containing, by recent survey, by horizontal measurement, one hundred and seventy & $\frac{5}{10}$ acres, and bounded as follows:

54 Beginning at two birches on the banks of Simmons creek, N. 50 26 W. 80.83 chains up Simmons creek, crossing ridges and spurs, to six dead chestnuts on ridge, corner to A. G. Belcher; N. 48 57′ E. 24.15 chains with a line of A. G. Belcher, crossing a branch of Simmons creek and a ridge, to two spruce pines and a fallen white oak on the bank of a branch of Simmons creek, corner to the Payne tract; S. 88 50′ E. 32.40 chains with a line of said Payne tract, crossing ridges and branches of Simmons creek, to a white oak and two spruce pines on the bank of the middle fork of Simmons creek; thence down said creek, with its meanderings, S. 33 W. 8.61 chains, S. 3 50′ W. 4.95 chains, S. 5 35′ W. 3.98 chains to a spruce pine, corner to Henry Sadler's land, and continueing down said creek, with the meanderings thereof, S. 1 30′ E. 5.56 chains, S. 26 W. 3.30 chains, S. 27 E. 5.52 chains, S. 15 30′ E. 4.49 chains, S. 22 E. 9.00 chains, S. 9 30′ E. 3.57 chains, S. 17 E. 2.10 chains, S. 12 E. 3.21 chains, S. 24 30′ E. 10.77 chains, S. 8 30′ E. 6.71 chains, S. 46 E. 4.72 chains to lyndens, lower corner to the said Sadler's land; S. 5 30′ E. 83 links to the beginning, together with all the appertinencies to the said land belonging; to have and to hold the said interest in the said tract of land, with its appurtenances aforesaid, unto the said P. H. Rorer, his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, do covenant and agree with the said P. H. Rorer, his heirs and assigns, in manner and form following, to wit: That the said George W. Belcher is seized in fee simple and has good right to convey the said property hereinbefore mentioned and conveyed to the said P. H. Rorer in fee simple.

That the said P. H. Rorer, his heirs and assigns, shall have quiet and peaceable possession of the property hereby conveyed and its appurtenances aforesaid forever; that the said tract of

55 land is free from all incumbrances or charges whatsoever; that they will warrant and defend the said property against all persons whatsoever, and that they will execute such further as-

surances of and for the said land as may be requisite to make the title thereto of the said P. H. Rorer, his heirs and assigns, sure and complete forever; but the said parties of the first part expressly reserve their vendor's lien for the sum of five thousand eight hundred and ninety-three dollars and seventy-five cents, it being the balance of purchase-money yet unpaid therefor.

Witness the following signatures and seals.

G. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county and State aforesaid, do certify that George W. Belcher, whose name is signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, has this day acknowledged the same before me in my said county and State.

And I do further certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, this day personal appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Mary Belcher, acknowledged said writing to be her act, and declared that she had willingly executed the same, and that she does not wish to retract it.

Given under my hand this 26th day of February, 1885.

CHRISTIAN BELCHER,
N. P., Mercer County, W. Va.

56 WEST VIRGINIA:

In Mercer County Court Clerk's Office.

FEBRUARY 28, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

STATE OF WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $1.10
S. P. P., *Clk.*

(Ex. " B No. 5" referred to in the bill is as follows :)

This deed, made this 28th day of February, 1885, between N. L. Reynolds, of the county of Mercer and State of West Virginia, party of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth:

That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said party of the first part has this day granted and conveyed, and by these presents doth grant and convey, unto the said party of the second part the following real estate, to wit, three-eighths ($\frac{3}{8}$), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being a part of the interest in the same tract of land conveyed by George
57 W. Belcher and wife to the said N. L. Reynolds by deed bearing date on the 4th day of December, 1884. For a more particular description of said land reference is made to the description of same in a deed executed by George W. Belcher and wife to P. H. Rorer on the 25th day of February, 1885, and of record in Mercer county court clerk's office, which description is made part of this deed; and the party of the first part covenants that he will warrant specially the title to the property hereby conveyed.

Witness the following signature and seal.

N. L. REYNOLDS. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do certify that N. L. Reynolds, whose name is signed to the foregoing and annexed writing, bearing date on the 28th day of February, 1885, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 28th day of February, 1885.

C. W. STRALEY, *N. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

58 Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 55 cts.

(Ex. "B No. 6" referred to in the bill is as follows:)

This deed, made this the 28th day of February, 1885, between P. H. Rorer and Nannie Rorer, his wife, of the county of Roanoke and State of Virginia, parties of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth: That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said parties of the first part have this day granted and conveyed, and by these presents do grant and convey, unto the said party of the second part the following real estate, to wit, three-eighths (3/8), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being the interest in the same tract of land conveyed by George W. Belcher and wife to said Rorer by deed bearing date on the 25th day of February, 1885, and of record in Mercer county court clerk's office; to which deed reference is here made for a more particular description of said tract of land, which description in said deed is made part of this deed; and the parties of the first part covenant that they will warrant specially the title to the *the title to the* property hereby conveyed.

Witness the following signatures and seals.

P. H. RORER. [SEAL.]
NANNIE RORER. [SEAL.]

VIRGINIA, *Roanoke County,* } *To wit:*

59 I, T. F. Barksdale, a notary public in and for county and State aforesaid, do certify that P. H. Rorer, whose name is signed to the writing above and hereto annexed, bearing date on the 28th day of February, 1885, has this day acknowledged the same before me in my said county and State; and I do further certify that Nannie Rorer, wife of said P. H. Rorer, whose name is also signed to the foregoing and annexed writing, bearing date on the 28th day of February, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Nannie Rorer, acknowledged said writing to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and notarial seal this the 9th day of March, 1885.

[L. S.] T. F. BARKSDALE, *N. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 6th day of May, 1887.

85 cts. ch'g'd to Doran, Jos. I.

SAM'L P. PEARIS, *Clerk.*

60 (Exhibit "C No. 1" referred to in the bill is in the words and figures following, to wit:)

GEORGE W. BELCHER, Plaintiff, *against* R. B. MCNUTT, Com'r of School Lands. } In the Matter of School Land.

The petition of George W. Belcher, filed in the matter of school lands, against R. B. McNutt, com'r of school lands for Mercer county, West Virginia.

To the Hon. David E. Johnston, judge of the circuit court of Mercer county, West Virginia:

Your petitioner would respectfully represent unto your honor that he is the owner of a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, in the county of Mercer and State of West Virginia, adjoining the lands of Witten, Sadler, and others, and containing about 75 acres. Said tract or parcel of land was conveyed to your petitioner by Chrispianos Belcher by deed bearing date on the 18th day of October, 1884. A certified copy of said deed is herewith filed as part of this petition, marked Exhibit "G. W. B."

Your petitioner would further represent that said tract of land was conveyed by Obediah Belcher to Chrispianos Belcher by deed bearing date on the 12th day of May, 1842; a certified copy of said conveyance is herewith filed as part of this petition, marked Exhibit "C. B.;" that on the 11th day of May, 1842, said land was conveyed by James Hector to said Obadiah Belcher, and a copy of said conveyance is herewith filed as part of this petition, marked Exhibit "J. H.;" and he avers that said tract of land was conveyed to said Hector by Wilson Cary Nicholos by deed, which is of record in the county court clerk's office of Tazewell county, Virginia, said land having been theretofore granted to said W. C. Nicholos by patent from the Commonwealth of Virginia.

He avers that a short time prior to the formation of the
61 State of West Virginia his vendor, Chrispianos Belcher, removed from the State of Virginia and county of Mercer to the State of Missouri, and that by mistake and accident the said land was omitted from the land books, and he is advised that said land is forfeited and the title thereto vested in the State of West Virginia for non-entry thereof on the land books of Mercer county.

Your petitioner further avers that at the time the title vested in the State his said vendor, Chrispianos Belcher, had good, valid title thereto, superior to any other claimant thereof, and that your petitioner now has good, valid title thereto, superior to any other claimant thereof, and he is advised and now avers that he is entitled to redeem the same by paying all taxes and interest due on said land by reason of the forfeiture thereof from the year 1863 to the present time and all costs.

Your petitioner avers that at the time of the forfeiture of said tract of land it was worth $50.00. Your petitioner prays that he be allowed to redeem said land by paying all taxes, interest, &c., that is due against said tract of land by reason of the forfeiture thereof as aforesaid, and that the same be directed to be placed on the land books of Mercer county in the name of your petitioner; and as in duty, &c., he will ever pray, &c.

GEORGE W. BELCHER,
By Counsel.

JOHNSTON AND REYNOLDS,
Attorneys for Petitioner.

WEST VIRGINIA:

In Mercer Circuit Court.

NOVEMBER 21, 1884.

GEORGE W. BELCHER, Pl't'ff,
against
R. B. MCNUTT, Com'r of School Lands.

In the matter of school lands.

62 On motion of George W. Belcher, he has leave to file his petition in this cause asking leave to redeem a tract of land lying on Simmons creek, in Mercer county, West Virginia, adjoining the lands of —— Sadler and others and containing by estimation about seventy-five acres, and said petition is accordingly filed, and R. B. McNutt, com'r of school lands, appeared in open court and waived process on said petition, and this cause *coming* on to be heard upon the papers formerly read herein and upon said petition of George W. Belcher and exhibits therewith filed, and was argued by counsel.

Upon consideration thereof the court doth adjudge and decree that said petition be referred to R. C. Christie, one of the commissioners in chancery for this court, with instructions to inquire into and report upon the matters and things, and particularly to inquire

into and report *upon the matters and things, and particularly to inquire and report* as to the amount of taxes and interest due and unpaid on said tract of land referred to in said petition, in whose name it was forfeited and when and how forfeited, in whom the legal title was at the time of the forfeiture, and, if more than one person claimed adverse titles thereto at the date of the forfeiture, the name of each of said claimants and a reference to the deed book or books in which the title papers of any claimant thereof can be found; what portion or portions, if any, of said tract is claimed by any person or persons under the provisions of section three of article thirteen of the constitution of this State, with the names of such claimants and the amount claimed by each as far as he can ascertain the same, and any other matters deemed pertinent by himself.

63 *Commissioner's Report.*

To the Honorable David E. Johnston, judge of the circuit court of Mercer county, West Virginia:

The undersigned commissioner, to whom an order of reference was made at this present November term, 1884, of the circuit court of said county, upon the petition of George W. Belcher, in a proceeding in the matter of school lands filed in said court in the name of George W. Belcher against R. B. McNutt, comm'r of school lands for Mercer county, W. Va., —:

Statement No. 1.

By examination and investigation of the matters in said petition alleged your commissioner is satisfied that said George W. Belcher has a good and valid title to the land in said petition, to wit, being a tract of land lying and being in the county of Mercer and State of West Virginia, on Simmons creek, a branch of Bluestone river, being 75 acres, more or less, and is a part of a survey purchased by Obediah Belcher of James Hector, then conveyed by Obediah Belcher to Chrispianos Belcher and by Chrispianos Belcher to said petitioner, George W. Belcher; and your commissioner is further of the opinion that said petitioner, George W. Belcher, has the right to redeem the said 75-acre tract of land claimed by him in his said petition by paying all the taxes due the State by reason of the forfeiture of said land, together with the interest which has accrued on said taxes. See Ex. "G. W. B.," "C. B.," & "J. H.," filed with the petition.

Statement No. 2.

Said tract of land was forfeited in the name of said Chrispianos Belcher, about the year 1863, by reason of omission from the land books, and at the time of the forfeiture of said land the legal title was in said Chrispianos Belcher. See Ex. "C. B.," filed with the said petition.

Statement No. 3.

Your commissioner has not been able to find there is any
64 one claiming adverse title to said petitioner, but that George W. Belcher has a good and valid title thereto and has a right to redeem and exonerate said land from said forfeiture by paying the taxes due thereon, with its accrued interest.

Statement No. 4.

The following is a statement showing the annual taxes due the State on said land, beginning with the year 1863 and up to and including 1884, with annual interest on same:

Years.	Taxes.	Interest.
1863	$ 45	$ 56
1864	45	54
1865	45	51
1866	45	48
1867	55	56
1868	67	65
1869	67	60
1870	54	45
1871	1 09	85
1872	88	63
1873	76	50
1874	79	47
1875	1 02	55
1876	97	46
1877	97	40
1878	95	34
1879	74	22
1880	70	16
1881	72	13
1882	72	08
1883	72	04
1884	72	00
Total taxes	$14 98	Total interest $9 18
Total taxes and interest		$24 16

Respectfully submitted the 27th day of November, 1884.

R. C. CHRISTIE,
Com'r Ch'y Mercer Cir. C't.

WEST VIRGINIA:

In Mercer Circuit Court.

NOVEMBER 29TH, 1884.

GEO. W. BELCHER
against
R. B. McNUTT, Com'r of School Lands.

65 In the matter of school lands.

This cause came on again this the 29th day of November, 1884, to be heard upon the papers formerly read herein, upon the petition of George W. Belcher and exhibits therewith filed, upon the order of reference to R. C. Christie, com'r in chancery for this court, entered in this cause at a former day of this term of the court, and upon the report of said Commissioner Christie, made in pursuance of the authority vested in him by said order of reference and this day filed by leave of the court, to which report there are no exceptions, and was argued by counsel.

And upon consideration thereof the court doth confirm said report of Com'r Christie; and it appearing to the court that said George W. Belcher has a good, valid fee-simple title, which is superior to that of any other claimant, to the tract of land referred to in said petition and report and described in said petition and the deed from Chrispianos Belcher to George W. Belcher, filed as an exhibit therewith, as "a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer and State of West Virginia, on the waters of Simmons —, a branch of Bluestone river, and being a part of a survey purchased by Obediah Belcher of James Hector in the year 1842 and a portion of the tract deeded by Obediah Belcher to Chrispianos Belcher, and bounded as follows, to wit: Beginning at two birches on the west bank of Simmons creek, corner to Wm. H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons —, corner to Witten and Graham-Payne tract; N. 85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons —,
66 corner to 400 acres deeded by said Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meanderings thereof to the beginning;" and the court being further of opinion that at the time of the forfeiture of said tract of land Chrispianos Belcher, the vendor of said George W. Belcher, had a good and valid fee-simple title thereto, superior to that of any other claimant; and the court being further of opinion that the said George W. Belcher (he having appeared in open court and offered to pay the sum of $30.71, it being the amount of all taxes, interest, damages, and costs due against said tract of land by reason of the forfeiture thereof) is entitled to be treated in the nature of a purchaser thereof, it appearing to the court that said George W. Belcher would have been entitled to the surplus of purchase-money

over and above the said sum of $30.71 had said tract of land been subjected to sale as school lands, — doth so adjudge, order, and decree; and the said George W. Belcher having in open court paid to R. B. McNutt, com'r of school lands for Mercer county, the said sum of $30.71, it is further adjudged, ordered, and decreed that said tract of land be released from said forfeiture and all former taxes and the title acquired by the State thereto by reason of the said forfeiture be, and is hereby, transferred to and vested in the said George W. Belcher as fully and completely as if the said forfeiture had never occurred, and all of the right, title, and interest of the State of West Virginia in and to the said tract of land which passed to and vested in the State under the constitution and laws thereof by reason of said forfeiture or otherwise is hereby transferred to and vested in the said George W. Belcher; and it is further ordered that R. B. McNutt, com'r of school lands, pay to Com'r Christie the sum of five dollars ($5.00), the amount of his fee for making said report,
67 and to the clerk of this court the amount of costs due him upon said petition, and R. B. McNutt, the com'r of school lands for Mercer county, is directed to convey to said George W. Belcher the tract of land described in this decree by proper deed, conveying all the right, title, and interest of the State therein to the said George W. Belcher.

I, R. C. Christie, clerk of the circuit court of Mercer county, in the State of West Virginia, do certify that the foregoing are true copies of the petition, report of com'r, and decrees aforesaid as appears on file and the records of my office.

Given under my hand this the 19th day of March, 1885.

R. C. CHRISTIE, *Clerk.*

Fee for copying, &c., $4.25, ch'g'd to Joseph I. Doran.

(Ex. "G. W. B." called for in the foregoing petition is as follows:)

This deed, made this 18th day of October, 1884, between Chrispianos Belcher, of the county of Montgomery, State of Mo., party of the first part, and George W. Belcher, of the county of Mercer, State of W. Va., party of the second part, witnesseth:

That, for and in consideration of seventy-five dollars, paid in hand, and other valuable consideration, the receipt whereof is hereby acknowledged before the signing and sealing of this deed, *do* sell, grant, and convey in fee simple unto Geo. W. Belcher a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer, State of W. Va., on the waters of Simmons creek, a branch of Bluestone river, and being part of a survey purchased by Obediah
68 —— of Jas. Hector in the year 1842 and a portion of the tract deeded by Obediah Belcher to Chrispianos Belcher, and bounded as follows: Beginning at two perches on the west bank of Simmons creek, corner to Wm. H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence north 50 E. 112 poles to a white oak and two pines on a

branch of Simmons —, corner to A. Witten and Graham-Payne tract; north 85 E. 134 poles with the Payne line to two pines & a white oak on another branch of Simmons —, corner to 400 acres deeded by said Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meand's thereof to the beginning; and the said party of the first part *do* hereby covenant with the party of the second part that he will warrant and defend the property hereby conveyed from him and his heirs forever, with all its appurtenances.

Witness the following signature and seal.

CHRISPIANOS BELCHER. [SEAL.]

STATE OF MISSOURI, *Montgomery County,* } *ss:*

Be it remembered that Chrispianos Belcher, who is personally known to the undersigned, notary public within and for the county of Montgomery and State of Missouri, as the person whose name is subscribed to the above and foregoing deed or instrument of writing as a party thereto, *and* acknowledged the same to be his voluntary act and deed for the purpose therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this October 18th, 1884.

My term as notary public will expire October 12th, 1885.

[L. S.] SENECA W. HAMMACK,
Notary Public.

WEST VIRGINIA:

69 In Mercer County Court Clerk's Office.

OCTOBER 29, 1884.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Samuel P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

(EX. "C. B." referred to in the foregoing petition is as follows:)

This indenture, made the 12th day of May, 1842, between Obediah Belcher, of the one part, and Chrispianos Belcher, of the other part, both of Mercer county, Va., witnesseth:

That, for the sum of one dollar and other valuable considerations in hand paid to said Obediah by said Chrispianos, the receipt whereof is hereby acknowledged, the said Obediah hath this day bargained and sold unto said Chrispianos and his heirs forever a certain tract or parcel of land on Philipings branch of Bluestone

river, Mercer county, Va., containing about fifteen hundred acres, be the same more or less, and bounded as follows: S. C.—Beginning at — on the west bank of Philipings creek, thence S. 70 W. — poles — on a line of Wilson Cary Nicholas survey, and with it S. 24 E. — poles to — on said line, corner to Robert Belcher's 1,500 acres; thence with a line thereof N. 60 E. — poles to — on the
70 bank of said creek; thence up and bounding on said Philipings creek about — to the beginning; to have and to hold said tract of lands, free from the said Obediah Belcher, to the said Chrispianos and his heirs forever.

In witness whereof the said Obediah hath set his hand and seal — day and year above written.

his
OBEDIAH x BELCHER. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
JAMES HECTOR.
C. H. A. WALKER.
COUNCIL WALKER.

This indenture of bargain & sale, conveying land from Obediah Belcher & wife to Chrispianos Belcher, was presented to me in the clerk's office of the county court of Mercer on the 11th of July, 1845, and proved by the oath of Council Walker, one of the subscribing witnesses, and on the 9th of February, 1846, by the oath of Chrispianos Walker, a witness also, and admitted to record.

Teste: C. W. CALFEE, *C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer Co., W. Va., do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 26th day of January, 1885.

SAM'L P. PEARIS, *Clerk.*

71 (Exhibit "C. No. 2" referred to in the foregoing petition is as follows:)

This deed, made this 3rd day of December, 1884, between R. B. McNutt, commissioner of school lands for Mercer county, West Virginia, party of the first part, and George W. Belcher, of the county of Mercer and State aforesaid, of the second part, witnesseth: That, in pursuance of the authority vested in him by an order made by the circuit court of Mercer county, West Virginia, in the case of George W. Belcher against R. B. McNutt, com'r of school lands, in the matter of school lands, on the 29th day of November, 1884, and by virtue of his authority as such commissioner of school lands, the said R. B. McNutt, commissioner of school lands, has this day granted and conveyed unto the said George W. Belcher, party of the second part, all the right, title, and interest of the State of West

Virginia in and to the real estate hereinafter described which passed to and vested in the State under the constitution and laws thereof by reason of the forfeiture of such real estate or otherwise, to wit, a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer and State of West Virginia, on the waters of Simmons —, a branch of Bluestone river, and being a part of a survey purchased by Obediah Belcher of James Hector in the year 1842 and a portion of the tract deeded by Obediah to Chrispianos Belcher, and bounded as follows, to wit: Beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Bel-
72 cher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons creek, corner to the Witten and Graham-Payne tract; N. 85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons creek, corner to 400 acres deeded by Chrispianos Belcher to Obediah Belcher; thence down Simmons —, with the meanderings thereof, to the beginning; to have and to hold the said real estate, with all the right, title, and interest of the State of West Virginia, unto the party of the second part, his heirs and assigns forever.

Witness the following signature and seal.

R. B. McNUTT, [SEAL.]
Com'r of School Lands.

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, D. W. M'Claugherty, a notary public in and for the county aforesaid, do certify that R. B. McNutt, com'r of school lands, whose name is signed to the writing above, bearing date on the 3rd day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 4th day of December, 1884.

D. W. McCLAUGHERTY,
Notary Public for Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6TH, 1884.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

STATE OF WEST VA., *County of Mercer,* } *To wit:*

73 I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 60c.
S. P. P.

(The process awarded under the foregoing order is in the words and figures following, to wit:)

The President of the United States of America to Simmons Creek Coal Company, a corporation duly organized and exercising corporate powers under the laws of the State of West Virginia and a citizen and inhabitant of said State, and John Freeman, Jenkins Jones, Levi D. Solomon, James M. Thomas, Charles P. Clemence, William P. Clemence, Hank Clemence, Theodore Franklin, Walter Franklin, Floyd E. Smith, George W. Belcher, Robert D. Belcher, R. B. McNutt, commissioner of school lands for Mercer county; P. H. Rorer, and Newton L. Reynolds, all of whom are citizens and inhabitants of the State of West Virginia, and Chrispianos Belcher, who is a citizen and inhabitant of the State of Missouri:

We command you that on the first Monday in September next, at rules to be held in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, laying all other matters and excuses aside, you do cause an appearance to be entered for you, in the said court, to a bill in chancery filed against you by Joseph I. Doran, a citizen and inhabitant of the State of Pennsylvania, and that you do answer concerning
74 such things as shall then and there be alleged against you, and observe what the said court shall direct in this behalf, upon pain of an attachment issuing against your person and such other process of contempt as the said court shall award.

Seal District Court of the United States, District of West Virginia, Charleston, W. Va.

Witness the Hon. John J. Jackson, judge of the said court, at Charleston, this 1st day of August, A. D. 1885, and in the 110th year of the Independence of the United States of America.

Teste: JASPER Y. MOORE,
Clerk District Court U. S., District W. Va.

MEMORANDUM.—The defendants are to enter their appearance in the suit mentioned in the foregoing writ, in the clerk's office therein mentioned, on or before the day on which the said writ is returnable; otherwise the bill will be taken *pro confesso.*

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., Dist. W. Va.

(The endorsement on the foregoing process is in the words and figures following, to wit:)

Executed this subpœna in chancery by delivering true copies of the same to each of —, John Freeman, Jenkins Jones, Levi D. Solomon, Charles P. Clemence, Samuel Cooper, Hank Clemence, Theodore Franklin, Walter Franklin, Thomas O'Conner, in person on

August 15, 1885, at Mercer county, West Virginia; and by delivering to Emma Smith, wife of Sampson Smith, defendant, a true copy of same, at his residence, in Mercer county, W. Va., on August 15, 1885, explaining the purport thereof to her, the said Sampson Smith not being found; and by delivering to James M. Thomas & George W. Belcher each a true copy of same, at Mercer county, W. Va., on the 21st day of August, 1885; and by delivering to R. B. Mc-
75 Nutt, commissioner of school lands for Mercer county, West Virginia, and A. W. Reynolds true copies of same, at Princeton, W. Va., August 22d, 1885; and by delivering to Newton L. Reynolds a copy of same, at Pocahontas Mines, Virginia, August 21, 1885; and by delivering to I. A. Welch, president of Simmons Creek Coal Company, defendant, a true copy of same, at Pearisburg, Virginia, on August 22, 1885; and by delivering to P. H. Rorer a true copy of same, at Roanoke City, Virginia, on August 24, 1885, Chrispianos Belcher not being a resident of nor found within my district. C. Sehon, U. S. marshal, by J. H. Van Buren, deputy. Marshal's fee, $59.80. Joseph I. Doran *vs.* Simmons Creek Coal Company & others. S'p'a and 17 copies. Issued August 1, 1885. Filed Sept. 2, 1885. Teste: J. Y. Moore, clerk D. C. U. S., D. W. Va. (J. H. Ferguson, att'y.) To Sept. rules, 1885.

76 And at another day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston, in said district, on Monday, the 2nd day of November, A. D. 1885, among the proceedings had was the following, to wit:

JOSEPH J. DORAN, Comp't,
vs.
SIMMONS CREEK COAL CO. & Others, Def'ts. } In Chancery.

The defendant, The Simmons Creek Coal Company, this day filed its answer to the bill, to which answer the complainant replies generally.

(Answer referred to in the above order is in the words and figures following, to wit:)

The separate answer of Simmons Creek Coal Company to a bill of complaint exhibited in your honor's court against it and others by Joseph I. Doran.

To the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, sitting with circuit court powers at Charleston, in said district:

This respondent, for answer to said bill or to so much thereof as it is advised it is material for it to answer, says that it is true, as stated in complainant's bill, that its codefendant, Chrispianos Belcher, was, in the year 1842, the owner in fee of a tract or boundary of land called 1,500 acres, situate in the county of Mercer, on the waters of Flipping creek, Simmons creek, and other tributaries of Bluestone river, and that the said Chrispianos Belcher sold and by

divers deeds conveyed many years ago to various parties the whole of the said boundary called 1,500 acres, except as hereinafter stated.

Further answering, respondent says that the said Chris-
77 pianos Belcher was the owner of the residue of said boundary of land called 1,500 acres, to wit, the tract of 200 acres claimed by the complainant and the tract now owned by this respondent; that in the year 1884 the said Chrispianos Belcher sold and conveyed to George W. Belcher the tract or boundary of land claimed and owned by this respondent, and "beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons —, corner to Witten and Graham 'Payne tract;' N. 85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons —, corner to 400 acres deeded by said Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meanders thereof to the beginning."

A copy of said deed is filed with complainant's bill, marked B No. 2, and a copy thereof is also herewith filed as part of this answer, marked No. 1.

Further answering, respondent says that after the said George W. Belcher had obtained his deed of conveyance from the said Chrispianos Belcher he feared that the said tract of land so conveyed to him had been forfeited to the State for non-entry for taxation on the land books of Mercer county, and he therefore filed his petition in the circuit court of Mercer county, exhibiting his claim and title to said boundary of land and asking to be allowed to redeem and purchase said land for the taxes, damages, and interest thereon and the costs, which he was allowed to do; and thereupon, pursuant to an order of said circuit court, R. B. McNutt, com'r of school lands for said county, conveyed to him by proper deed the State's right, title, and interest in and to said tract of land, all of
78 which will more fully appear by certified copies of said petition, proceedings, and deed of com'r, herewith filed as part of this answer, marked "X X."

Respondent further says that afterwards, to wit, on the 4th day of December, 1884, said George W. Belcher and wife conveyed to Newton L. Reynolds the undivided $\frac{5}{8}$ of said tract of land, and that the said George W. Belcher and wife, on the 23rd day of February, 1885, conveyed to P. H. Rorer the remaining undivided $\frac{3}{8}$ of said tract of land; that on the 13th day of January, 1885, the said Newton L. Reynolds conveyed $\frac{2}{5}$ of his $\frac{5}{8}$ to one I. A. Welch, and the remaining $\frac{3}{8}$ the said N. L. Reynolds, on the 28th day of February, 1885, sold and conveyed by deed to this respondent; that the said I. A. Welch, on the 13th day of January, 1885, sold and conveyed to one A. W. Reynolds $\frac{1}{16}$, undivided, of the said tract of land, and the remaining portion of his interest the said Welch, by deed dated the 28th day of February, 1885, conveyed to this respondent, and the said A. W. Reynolds, on the 28th day of February, 1885, conveyed the interest which was conveyed to him by the said Welch to this

respondent, and the said P. H. Rorer and wife, by deed dated the 28th day of February, 1885, sold and conveyed his interest in said tract of land to this respondent, thereby vesting this respondent with the full legal title to the whole of said tract of land, each of which said deeds are of record in the county court clerk's office of Mercer county, and certified copies of each thereof are herewith filed as part of this answer, marked Nos. 2, 3, 4, 5, 6, 7, 8, 9, & 10.

Further answering, respondent says that it denies that Chrispianos Belcher ever executed and delivered a deed to Robert D.
79 Belcher conveying the 200 acres claimed by complainant, or that it embraced any part of the tract owned by this respondent; that he may have had or made some kind of a contract with Robert D. Belcher for the said 200 acres of land, but that this was so respondent does not admit, but denies that it is true.

Respondent admits that the said Robert D. Belcher conveyed a tract of land called 200 acres, more or less, to Wm. H. Witten, which is part of the same now claimed by complainant; that this deed conveys by metes and bounds and is a matter of record; that said deed calls for "beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up said creek with Miller's line S. 55 W. 120 poles to six chestnuts, corner to Miller's survey, and with the same S. 35 E. 310 poles to a double and single poplar, corner to said Belcher, and with the same N. 40 E. 250 poles to the beginning;" that it is true that the general bearing of the said line from the two birches to the six chestnuts is up Simmons creek, yet this respondent denies that said line runs or was ever intended to run up Simmons creek with the meanders thereof, and further denies that the 200-acre tract claimed by the complainant embraces one foot of the tract of land conveyed to this respondent and claimed and owned by it.

This respondent avers the truth to be that the true and proper line, which is the line claimed by it, is a straight or direct line from the two birches to the six chestnuts, and that this is the only correct, just, proper, and legal construction as to the location of said line as it is set forth and described in the deed from said Robert D. Belcher to Wm. H. Witten, under which the complainant claims.

80 Respondent, for further answer to said bill, denies that there was any mistake made in the calls of the said deed from Robert D. Belcher to Wm. H. Witten, except in the degree and distance given, the call in the deed being "S. 55 W. 120 poles" from the two birches to the six chestnuts, when in fact the true call is N. 55 W. to six chestnuts, and by running the true course and distance as stated the complainant still has within his boundary 225 acres, which is all the land he is entitled to claim under the said deed from Robert D. Belcher to Witten.

But respondent again denies that the said Robert D. Belcher ever had any title to the land which — actually embraced in the said deed from him to Witten, and if he had had title to same this respondent positively denies that said deed embraces any of the land claimed by this respondent.

Respondent further denies that the said Robert D. Belcher, the

said Witten, his vendee, nor any other claiming under them have ever had any actual possession of said tract of two hundred acres of land or any part thereof; nor had the said Witten at any time actual possession of the 1,100-acre tract referred to in complainant's bill.

Further answering, respondent says that the two birches and the six chestnuts are well-known and recognized corners, and have been so known and recognized for long years both by Robert D. Belcher and Chrispianos Belcher, and that the said Robert D. Belcher and Wm. H. Witten long lived (and the said Wm. H. Witten now lives) in the immediate vicinity of this land, and respondent avers that they were altogether familiar with the corners to said land and all the water-courses thereon, and said Witten claims to have held under said deed from Robert D. Belcher for a period of more
81 than thirty years; and now, after this long lapse of time and this long acquiesence and silence of Witten on the subject of a mistake of boundary, this respondent, for the first time, hears it from the complainant's bill, and this, too, after most of the old men living in the neighborhood are dead and gone and the recollections of the transactions, if any there were, between the said Chrispianos and Robert D. Belcher faded from the memory of those living.

Respondent denies that the line of the said two hundred acres running from the birches up Simmons creek was defectively described in the deed from Chrispianos Belcher to Robert D. Belcher; and it further denies that the line described by the complainant in his bill and referred to in the map therewith exhibited was what was meant and intended both by the grantor and grantee in said deed, and it repeats its denial that there ever was a deed for said land from Chrispianos to Robert D. Belcher, or that such deed was ever lost, mislaid, or made way with by parties claiming adverse to complainant or those under whom he claims; and it further denies that the description in the deed from Robert D. Belcher to Witten for said land is also defective, as alleged in complainant's bill, or that it runs as claimed by complainant, or that the same was intended and understood by both parties to said deed to run as claimed by complainant.

Respondent further denies that the said Wm. H. Witten ever claimed the line of said 200-acre tract to commence at the said two birches and to run up Simmons creek and up the left-hand fork thereof and to the said six chestnuts; but respondent avers that he did claim from the said two birches a straight continuous line to the six chestnuts.

82 Further answering, respondent says that it supposes it is true that the said Chrispianos Belcher, on the 2nd day of April, 1885, did make a deed to the complainant, pretending to convey to him the said two hundred acres, the courses of which deed embrace or purport to embrace a part of the land owned by this respondent under the deed of Chrispianos Belcher to George W. Belcher of the — day of October, 1884, and hereinbefore referred to. What representations the complainant or his agents made to the

said Chrispianos Belcher or what consideration he paid him to induce him to make said deed respondent does not know, but is satisfied that either the said complainant or the said Chrispianos Belcher—which one it does not know—*have* attempted to perpetrate a deliberate fraud upon the rights of this respondent; and the attention of the court is respectfully and especially asked to the deed of Chrispianos Belcher to the complainant to show the inconsistencies and contradictions, want of good faith and fair dealing, shown on the face thereof.

This respondent had purchased the tract of land claimed by it for a fair and valuable consideration and without notice of said pretended equity, and had obtained the legal title thereto and had had its title deeds duly recorded long before the said complainant obtained his deed of April 2nd, 1885, from Chrispianos Belcher, and with notice of respondent's title of record, and that the boundary line between respondent's land and that claimed by the complainant was, from the two birches, a straight line to the six chestnuts, yet the complainant, in the face of all this knowledge and notice furnished him by the record, went to work deliberately to hatch up his pretended secret equity to this land, and to assert it in a
83 court of conscience against this respondent, a complete purchaser for a valuable consideration without notice of any equity claimed by the complainant.

Further answering, respondent says that it denies that the proceeding of George W. Belcher in the circuit court of Mercer county for the redemption and purchase of said tract of land in said proceedings described was irregular, null, void, and contrary to the statute, but was substantially in accordance therewith; and it denies that the complainant had any right to be heard in said proceeding or was entitled to any notice in regard thereto. If the said land was forfeited respondent insists that the said George W. Belcher had the right to remove the cloud from his title, and that the matter was one between him and the State, and with which the complainant had not nor has now anything to do. The State is not complaining and the complainant has no right to complain.

Respondent denies that the proceedings of the said Geo. W. Belcher in the circuit court or the procuring the deed from Chrispianos Belcher *was* had and procured by him (Geo. W. Belcher) with intent and desire and for the purpose of cheating and defrauding the complainant or any one else; and respondent denies that it was cognizant of any such intent or of the facts in relation to the forfeiture of said land, and it denies that it knew of or had any connection with said proceeding.

Respondent further says that the charge in complainant's bill that it was cognizant of all the facts in relation to the pretended forfeiture of said tract of land, and that said proceedings were gotten up and carried out expressly with a view of assisting it, the said
84 company, to get the said land by a title which it was believed would enable it to hold it against the complainant, is not true, but is wholly false and gratuitous on the part of the complainant, and said charge is wholly, fully, and flatly denied by this respondent.

Respondent further says that it is true that it has possession of the tract of land claimed and owned by it under its title deeds; that it is preparing to mine and ship coal; that its lessees have already expended large sums of money in the opening of the mines, making drifts, building narrow-gauge railroad, erecting houses, buildings, tipples, &c.; that its said tract of land is a valuable one, worth at least ten thousand dollars, its chief value consisting in the coal and timber, and especially its royalties derived from its lessees from the mining of the coal; and as this tract of land lies in front of other lands owned by the complainant and deprives him from reaching the railroad with the coal, &c., from the land behind respondent, he, the complainant, has thought it necessary and altogether proper to attempt to deprive this respondent of its land and just rights by the assertion of a pretended secret equity, which respondent avers he well knows has no just or honest foundation in fact.

Respondent further denies that the deeds from Chrispianos Belcher to George W. Belcher, from R. B. McNutt, com'r of school lands, to said George W. Belcher, and the said deeds from George W. Belcher te Reynolds and Rorer and from Reynolds and Rorer to respondent constitute a cloud upon complainant's title, as alleged in his bill. The complainant has no title to the land embraced in said deeds or any part thereof; and respondent further avers that the complainant has no standing in this cause in a court of equity.

85 Further answering, respondent would respectfully and especially call the attention of the court to the fact that the deed from Robert D. Belcher to Wm. H. Witten calls for "beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land," thus recognizing that Chrispianos Belcher at that time owned the land down to the two birches, and which is now the land of this respondent.

Respondent denies each and every allegation of fraud and insinuation or charge of fraud, bad faith, or unfair dealing in complainant's bill alleged.

Respondent, further answering, says that the alleged mistake set up in the bill in the deed from Chrispianos Belcher to Robert D. Belcher never existed and was never made, and this is apparent from the following facts:

1st. The quantity called for in the deed from Chrispianos to said Robert D. Belcher is 200 acres. If the line from the two birches to the six chestnuts be run as a straight line Robert gets the 200 acres in full that he purchased; but if the line be altered, as claimed in the bill, so as to run up Simmons creek, with the meanders of the creek, to the head of the left-hand fork thereof, and thence to the chestnuts, it will enclose 75 acres more than Robert bought from Chrispianos.

2nd. If the line be run as a straight line between the points aforesaid George W. Belcher gets the 75 acres that he purchased from Chrispianos; but if it be run as claimed in the bill, then George will have acquired only by his deed the lands lying above and between the forks of Simmons creek—15 acres.

3rd. The true method of running the line between the birches

and the chestnuts has *ante litam motam* and more than 30 years ago been acquiesced in by the remote grantors of the complainant, under whom he now claims title, to wit, Robert D. Belcher
86 and Wm. H. Witten. See Complainant's Exhibit A No. 1, where the straight line between the birches and chestnuts is called for.

4th. The true method of running said line (a straight line) is acquiesed in by the remote but common grantor of both complainant and respondent in the deed from Chrispianos Belcher to George W. Belcher, dated 18th October, 1884 (Exhibit B No. 2 filed with the bill), thus showing an acquiescence in the straight line from 23rd December, 1852, to 18th October, 1884, a period of more than thirty years.

5th. All the deeds that give any description of lands claimed by both complainant and respondent claim to run from the birches to the chestnuts by one line. Complainant, to get from one of these points to the other, is compelled to interpolate a second line from the head of Simmons creek to the chestnuts.

Respondent reiterates that there has been no mistake committed in the deed from Chrispianos Belcher to Robert D. Belcher, if any such deed was ever executed; but, if any such mistake was made, it is too late to correct it after forty years, and the claim set up in the bill is stale.

Respondent denies and disputes the title and claim of title of complainant to any of the lands described in the deed or pretended deed from the Southwest Virginia Improvement Company to the complainant (Exhibit A No. 5 filed with the bill) upon the ground that it nowhere appears on the face of said deed or otherwise that the parties who executed said deed had authority to execute the same lawfully, derived from the said company.

Respondent especially denies that the complainant has ever paid the taxes assessed upon the land in controversy in this suit, and calls for any vouchers or tax bills that the complainant may be supposed to have showing such payment.

87 Respondent here files a map showing the true situation of the land in controversy and the true lines of complainant and respondent, marked Exhibit No. 11.

Respondent, having fully answered, prays to be hence dismissed with its costs.

And, by way of authentication of this answer, this respondent has caused its corporate name to be hereto attached and its corporate seal to be hereto affixed.

{ Seal Simmons Creek Coal Company, Mercer County, West Virginia, January 17th, 1885. }

THE SIMMONS CREEK COAL COMPANY,
By QUARRIER AND REYNOLDS, *Sol's.*

(Here insert map called for in the answer above, marked No. 11.)

(Here follows map marked page 87.)

88 (Exhibit called for in the answer, marked No. 1, is as follows:)

This deed, made this 18th day of October, 1884, between Chrispianos Belcher, of the county of Montgomery, State of Mo., party of the first part, and Geo. W. Belcher, of the county of Mercer, State of W. Va., party of the second part, witnesseth:

That, for and in consideration of seventy-five dollars paid in hand and other valuable consideration, the receipt whereof is hereby acknowledged before the signing and sealing of this deed, — *do* sell, grant, and convey in fee simple unto Geo. W. Belcher a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer, State of W. Va., on the waters of Simmons —, a branch of Bluestone river, and being part of a survey purchased by Obediah —— of Jas. Hector in the year 1842 and a portion of the tract deeded by Obediah Belcher to Chrispianos Belcher, and bounded as follows, to wit: Beginning at two birches on the west bank of Simmons creek, corner to Wm. H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence north 50 E. 112 poles to a white oak and two pines on a branch of Simmons —, corner to Witten's and Graham-Payne tract; north 85 E. 134 poles with the Payne line to two pines & a white oak on another branch of Simmons —, corner to 400 acres deeded by said Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meand's thereof to the beginning; and the said party of the first part *do* hereby covenant with the party of the second part that he will warrant and defend the property hereby conveyed from him and his heirs forever, with all its appurtenances.

Witness the following signature and seal.

CHRISPIANOS BELCHER. [SEAL.]

89 STATE OF MISSOURI, } *ss:*
Montgomery County, }

Be it remembered that Chrispianos Belcher, who is personally known to the undersigned, notary public within and for the county of Montgomery and State of Missouri, as the person whose name is subscribed to the above and foregoing deed or instrument of writing as a party thereto, — and acknowledged the same to be his voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this October 18th, 1884.

My term as notary public will expire October 12th, 1885.

[L. S.] SENECA W. HAMMACK,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

OCTOBER 29, 1884.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 50 cts., ch'g'd to Simmons C'k Coal Co.

(Ex. marked "X X" referred to in the foregoing answer is in the following words and figures, to wit:)

90 This deed, made this the 3rd day of December, 1884, between R. B. McNutt, commissioner of school lands for Mercer county, West Virginia, party of the first part, and George W. Belcher, of the county of Mercer and State aforesaid, of the second part, witnesseth:

That, in pursuance of the authority vested in him by an order made by the circuit court of Mercer county, West Virginia, in the case of George W. Belcher against R. B. McNutt, com'r of school lands, in the matter of school lands, on the 29th day of November, 1884, and by virtue of his authority as such com'r of school lands, the said R. B. McNutt, com'r of school lands, has this day granted and conveyed unto the said George W. Belcher, party of the second part, all the right, title, and interest of the State of West Virginia in and to the real estate, hereinafter described, which passed to and vested in the State, under the constitution and laws thereof, by reason of the forfeiture of such real estate or otherwise, to wit, a certain tract or boundary of land, supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer and State of West Virginia, on the waters of Simmons —, a branch of Bluestone river, and being a part of a survey purchased by Obediah Belcher of James Hector in the year 1842 and a portion of the tract deeded by Obediah to Chrispianos Belcher, and bounded as follows, to wit: Beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons —, corner to the Witten and Graham-Payne tract; N.

85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons creek, corner to 400 acres deeded by Chrispianos Belcher to Obediah Belcher; thence down Sim-
91 mons — with the meanderings thereof to the beginning; to have and to hold the said real estate, with all the right, title, and interest of the State of West Virginia, unto the party of the second part, his heirs and assigns forever.

Witness the following signature and seal.

R. B. McNUTT, [SEAL.]
Com'r of School Lands.

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, D. W. McClaugherty, a notary public in and for the county aforesaid, do certify that R. B. McNutt, com'r of school lands, whose name is signed to the writing above, bearing date on the 3rd day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 4th day of December, 1884.

D. W. McCLAUGHERTY,
Notary Public for Mercer Co., W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6, 1884.

This day the foregoing deed was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 70 cts., charged to Simmons Creek Coal Co.

92 (The following deeds are called for in the answer, and are numbered as follows: No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, and No. 10:)

No. 2. This deed, made this the 4th day of December, 1884, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and Newton L. Reynolds, of the county and State aforesaid, of the second part, witnesseth: That, for and in consideration of the sum of sixty-

six dollars and ten cents, the receipt of which is hereby acknowledged by the parties of the first part, and other valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part the undivided five-eighths part of the following tract or boundary of land, situate and being in the county of Mercer and State of West Virginia, on the waters of Simmons creek, a branch of Bluestone river, and being the same tract or boundary of land conveyed by Chrispianos Belcher by deed bearing date on the 18th day of October, 1884, and the same tract or boundary of land conveyed by R. B. McNutt, commissioner of school lands for Mercer county, to George W. Belcher by deed bearing date on the 3rd day of December, 1884, and bounded as follows, to wit: Beginning at two birches on the bank of Simmons creek in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obediah Belcher and a corner to the William H. Witten land, and with a line of the said Witten land N. 50° 40′ W. 85.40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of said ridge, to six dead chestnuts on said ridge, a corner to A. G. Belcher's land, and with a line of same N. 49° 10′ E. 25.00 —, crossing a branch of Simmons creek at 15.00 chains, to a white oak and two spruce pines on another
93 branch of said Simmons creek; N. 89° 10′ E. 35.25 chains, crossing hollows and ridges and the middle fork of said Simmons creek, to two spruce pines and a white oak about ¾ chain from said fork; thence down Simmons — with the meanderings thereof S. 33° 30′ W. 9.20 chains, S. 3 40 W. 8.19 chains to a spruce pine, a corner to Henry Sadler's land, and with said Sadler's line continuing down said Simmons creek S. 1° 30′ E. 5.56 chains, S. 26° W. 3.33 chains, S. 27° E. 5.52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9° 30′ E. 3.57 chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46° E. 4.72 chains, S. 5 30 E. 83 links to the beginning, said boundary containing, by recent survey, one hundred and eighty-five acres; and the said parties of the first part covenant with the party of the second part that they will warrant specially the title to the property hereby conveyed; to have and to hold the said real estate and premises unto the said party of the second part, his heirs and assigns forever.

Witness the following signatures and seals.

GEO. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that George W. Belcher, whose name is signed to the writing above, bearing date on the 4th day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this 5th day of December, 1884.

CHRISTIAN BELCHER,
N. P., Mercer Co., W. Va.

WEST VIRGINIA, }
Mercer County, } *To wit:*

94 I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the writing above, bearing date on the 4th day of December, 1884, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Mary Belcher, acknowledged the said writing to be her act, — declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER,
N. P., Mercer Co., W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6TH, 1884.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, }
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing is a true and correct copy from the records of my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $1.00, charged to Simmons Creek Coal Co.

No. 3 is as follows:

95 This deed, made this 25th day of February, 1885, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and P. H. Rorer, of Roanoke, Virginia, party of the second part, witnesseth:

That the said George W. Belcher and Mary Belcher, his wife, for and in consideration of the sum of six thousand three hundred and ninety-three dollars and seventy-five cents, five hundred dollars, part of said sum in hand paid before the sealing and delivery of

these presents, the receipt whereof is hereby acknowledged, and the residue of said sum to be paid hereafter, as evidenced by bonds executed by the said P. H. Rorer to said Geo. W. Belcher for the same, do hereby grant, bargain, sell, release, and confirm, with covenants of general warranty of title, to the said P. H. Rorer and his heirs and assigns forever three-eighths ($\frac{3}{8}$), undivided, of a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, in the county of Mercer and State of West Virginia, it being the same tract five-eighths ($\frac{5}{8}$), undivided, of which has heretofore been conveyed by the said parties of the first part to N. L. Reynolds, and containing, by recent survey, by horizontal measurement, one hundred and seventy and $\frac{5}{10}$ acres, and bounded as follows: Beginning at two birches on the bank of Simmons creek, N. 50° 26′ W. 80.33 chains up Simmons creek, crossing ridges and spurs, to six dead chestnuts on a ridge, corner to A. G. Belcher; N. 48° 57′ E. 24.15 chains with a line of A. G. Belcher, crossing a branch of Simmons creek and a ridge, to two spruce pines and a fallen white oak on the bank of a branch of Simmons creek, corner to the Payne tract; S. 88° 50′ E. 32.40 chains with a line of said Payne tract, crossing ridges and branches of Simmons creek, to a white oak and two spruce pines on the bank of the middle fork of Simmons creek; thence down said creek with its meanderings S. 33 W. 8.61 chains, S. 3° 50′ W. 4.95 chains, S. 5° 35′ W. 3.98 chains to a spruce pine, corner to Henry Sadler'- land, and continuing down said creek with the meanderings thereof S. 1° 30′ E. 5.56 chains, S. 26° W. 3.30 chains, S. 27° E. 5.52 chains, S. 15° 30′ E. 4.49 —, S. 22° E. 9.00 chains, S. 9° 30′ E. 3.57 chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° E. 6.71 chains, S. 46 E. 4.72 chains to lyndens, lower corner to the said Sadler's land; S. 5° 30′ E. 83 links to the beginning—

96

Together with all the appurtenances to the said land belonging; to have and to hold the said interest in the said tract of land, with its appurtenances aforesaid, unto the said P. H. Rorer, his heirs and assigns forever; and the said parties of the first part, for themselves and their heirs, do covenant and agree with the said P. H. Rorer, his heirs and assigns, in manner and form following, to wit: That the said George W. Belcher is seized in fee simple and has a good right to convey the said property hereinbefore mentioned and conveyed to the said P. H. Rorer in fee simple; that the said P. H. Rorer, his heirs and assigns, shall have quiet and peaceable possession of the said property hereby conveyed and its appurtenances aforesaid forever; that the said tract of land is free from all incumbrances or charges whatsoever; that they will warrant and defend the said property against all persons whatsoever, and that they will execute such further assurances of and for the said land as may be requisite to make the title thereto of the said P. H. Rorer, his heirs and assigns, sure and complete forever.

But the said parties of the first part expressly reserve their vendor's lein for the sum of five thousand eight hundred and ninety-three dollars and seventy-five cents, it being the balance of purchase-money yet unpaid therefor.

Witness the following signatures and seals.

G. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

97 WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county and State aforesaid, do certify that George W. Belcher, whose name is signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, has this day acknowledged the same before me in my said county and State; and I do further certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having the said writing fully explained to her, she, the said Mary Belcher, acknowledged said writing to be her act, — declared that she had willingly executed the same, and that she does not wish to retract it.

Given under my hand this 26th day of February, 1885.

CHRISTIAN BELCHER,
N. P., Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

FEBRUARY 28TH, 1885.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

98 Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $1.10, charged to Simmons Creek Coal Co.

S. P. P., *Clk.*

No. 4. This deed, made this the 13th day of January, 1885, between N. L. Reynolds, of the first part, and I. A. Welch, of the second part, witnesseth:

That, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and other valuable consideration, the said party of the first part has this day granted unto the said

party of the second part two-eighths, undivided, of a certain tract of land situate in the county of Mercer and State of West Virginia, on Simmons creek, a branch of Bluestone river, and bounded as follows: Beginning at two birches on the bank of Simmons creek in a line of a survey of about 2,500 acres conveyed by James Hector to Obediah Belcher and corner to Witten, and with a line of same N. 50° 40′ W. 85.40 chains up Simmons creek, topping a ridge at twenty-three chains and crossing hollows and points, to six dead chestnuts on said ridge, a corner to Green Belcher, and with a line of same N. 49° 10′ E. 25.00 chains, crossing a branch of Simmons creek at 15 chains, to a white oak and two pines by a branch of Simmons creek; N. 89° 10′ E. 35.25 chains, crossing hollows and points and the middle fork of said creek, to two pines and a white oak about ¾ chain from said fork; thence down Simmons creek with the meanderings thereof S. 33° 30′ W. 9.20 chains, S. 3° 40′ W. 8.19 chains to a spruce pine, corner to Henry Sadler, and, continuing down said creek, S. 1° 30′ E. 5.56 chains, S. 26 W. 3° 33′ chains, S. 27° E. 5.52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9° 30′ E. 3.57 chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46 E. 4.72 chains, S. 5° 30′ E. 83 links to the beginning, said tract containing about one hundred and eighty-five acres; and the said party of the first — covenants that he will warrant specially the title to the property hereby conveyed; to have and to hold the said real estate and premises unto the party of the second part, his heirs and assigns forever.

99

Witness the following signature and seal.

N. L. REYNOLDS. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do certify that N. L. Reynolds, whose name is signed to the writing above, bearing date on the 13th day of January, 1885, has this day acknowledged the same before — in my said county and State.

Given under my hand this 13th day of January, 1885.

C. W. STRALEY,
N. P., Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

JANUARY 17TH, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA,
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 60 cts., charged to Simmons C'k Coal Co.

100 No. 5. This deed, made this 13th day of January, 1885, between I. A. Welch and Mary Welch, his wife, parties of the first part, and A. W. Reynolds, party of the second part, witnesseth: That, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and other valuable consideration, the said parties of the first part have this day granted and conveyed unto the said party of the second part one-eighteenth, undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, a branch of Bluestone river, and bounded as follows: Beginning at two birches on the bank of Simmons creek in a line of a survey of about 2,500 acres conveyed by James Hector to Obediah Belcher and corner to Witten, and with a line of same N. 50° 40′ W. 85.40 chains up Simmons creek, topping a ridge at twenty-three chains and crossing hollows and points, to six dead chestnuts on said ridge, a corner to Green Belcher, and with a line of same N. 49° 10′ E. 25.00 chains, crossing a branch of Simmons creek at 15 chains, to white oak and two pines by a branch of Simmons creek; N. 89° 10′ E. 35.25 chains, crossing hollows and points and the middle fork of said creek, to two pines and a white oak about ¾ chain from said fork; thence down Simmons creek with the meanderings thereof S. 33° 30′ W. 9.20 chains, S. 3° 40′ W. 8.19 chains to a spruce pine, corner to Henry Sadler, and continuing down said creek S. 1° 30′ E. 5.56 chains, S. 26° W. 3.33 chains, S. 27 E. 52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9 30 E. 3.57 chains, S. 17 E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46 E. 4.72 chains, S. 5° 30′ E. 83 links to the beginning, said tract containing about one hundred and eighty-five acres; and the said parties of the first part covenant that they will warrant specially the title to the
101 property hereby conveyed; to have and to hold the said real estate and premises unto the party of the second part, his heirs and assigns forever.

Witness the following signatures and seals.

I. A. WELCH. [SEAL.]
MARY WELCH. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do certify that I. A. Welch, whose name is signed to the foregoing writing, bearing date on the 13th day of January, 1885, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 13th day of January, 1885.

C. W. STRALEY,
N. P., Mercer Co.

STATE OF VIRGINIA, *Giles County,* } *To wit:*

I, F. G. Thrasher, a justice of the peace for the county and State aforesaid, do certify that Mary Welch, wife of the said I. A. Welch, whose name is signed to the foregoing writing, bearing date on the 13th day of January, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Mary Welch, acknowledged said writing to be her act, — declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this the 16th day of January, 1885.

F. G. THRASHER,
J. P., Giles County, Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18TH, 1885.

102 This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 70 cts., ch'g'd to Simmons C'k Coal Co.

No. 6. This deed, made this 28th day of February, 1885, between I. A. Welch and Mary Welch, his wife, of the county of Giles and

State of Virginia, parties of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth:

That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said parties of the first part have this day granted and conveyed, and by these presents do grant and convey, unto the said party of the second part the following real estate, to wit, seven thirty-sixths ($\frac{7}{36}$), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being a part of the interest in the same tract of land conveyed to the said I. A. Welch, by deed bearing date on the 13th day of January, 1885, by N. L. Reynolds, and for a more particular description of said *land*
tract of land reference is made to a deed executed by George
103 W. Belcher and wife to P. H. Rorer on the 25th day of February, 1885, and of record in Mercer county court clerk's office, and the description of said tract in said deed is made part of this deed; and the said parties of the first part covenant that they will warrant specially the title to the property hereby conveyed; to have and to hold the said real estate unto the said party of the second part and its assigns forever.

Witness the following signatures and seals.

I. A. WELCH. [SEAL.]
MARY WELCH. [SEAL.]

VIRGINIA, *Giles County,* } *To wit:*

I, F. G. Thrasher, a justice of the peace in and for the county and State aforesaid, do certify that Mary Welch, the wife of I. A. Welch, whose names are signed to foregoing and annexed deed, bearing date on the 28th day of February, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and — said deed fully explained to her, she, the said Mary Welch, acknowledged said deed to be her act, — declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this the 14th day of March, 1885.

F. G. THRASHER, *J. P.*

VIRGINIA, *Giles Co.,* } *To wit:*

I, F. G. Thrasher, a justice of the peace for the county and State aforesaid, do certify — I. A. Welch, whose name is signed to the foregoing and annexed writing, bearing date on the 28th day of February, 1885, has this day acknowledged the same before me in my county aforesaid.

Given under my hand this 19 day of March, 1885.

104 F. G. THRASHER, *J. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 20, 1885.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 65 c'ts, ch'g'd to Simmons C'k Coal Co.

No. 7. This deed, made this 28th day of February, 1885, between A. W. Reynolds, of the county of Mercer and State of West Virginia, party of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth: That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said party of the first part has this day granted and conveyed, and by these presents doth grant and convey, unto the said party of the second part the following real estate, to wit, one-eighteenth ($\frac{1}{18}$), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being the interest in the same tract of
105 land conveyed by I. A. Welch and wife to said A. W. Reynolds by deed bearing date on the 13th day of January, 1885. For a more particular description of said tract of land reference is made to a deed executed by George W. Belcher and wife to P. H. Rorer on the 25 day of February, 1885, and of record in Mercer county court clerk's office. The description given in said deed of the said tract of land is referred to and made part of this deed.

And the said party of the first part covenants that he will warrant specially the title to the property hereby conveyed.

Witness the following signature and seal.

A. W. REYNOLDS. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do certify that A. W. Reynolds, whose name is signed to the writing above, bearing date on the 28th day of February, 1885,

has this day acknowledged the same before me in my said county and State.

Given under my hand this the 28th day of February, 1885.

C. W. STRALEY, *N. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18TH, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer
106 county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 45 cts., ch'g'd to Simmons C'k Coal Co.

No. 8. This deed, made this 28th day of February, 1885, between P. H. Rorer and Nannie Rorer, his wife, of the county of Roanoke and State of Virginia, parties of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth: That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said parties of the first part have this day granted and conveyed, and by these presents do grant and convey, unto the said party of the second part the following real estate, to wit, three-eighths ($\frac{3}{8}$), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being the same interest in the same tract of land conveyed by George W. Belcher and wife to said Rorer by deed bearing date on the 25th day of February, 1885, and of record in Mercer county court clerk's office; to which deed reference is made for a more particular description of said tract of land, which description in said deed is made part of this deed; and the parties of the first part covenant that they will warrant specially the title to the property hereby conveyed.

Witness the following signatures and seals,

P. H. RORER. [SEAL.]
NANNIE RORER. [SEAL.]

107 VIRGINIA, *Roanoke County,* } *To wit:*

I, T. F. Barksdale, a notary public in and for county and State aforesaid, do certify that P. H. Rorer, whose name is signed to t e

writing above and hereto annexed, bearing date on the 28th day of February, 1885, has this day acknowledged the same before me in my said county and State; and I do further certify that Nannie Rorer, wife of said P. H. Rorer, whose name is also signed to the foregoing and annexed writing, bearing date on the 28th day of February, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Nannie Rorer, acknowledged said writing to be her act, — declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and notarial seal this the 9th day of March, 1885.

[L. S.] T. F. BARKSDALE, *N. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18, 1885.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

108 Fee for copy, 55 cts., charged to Simmons Creek Coal Co.

No. 9. This deed, made this 28th day of February, 1885, between N. L. Reynolds, of the county of Mercer and State of West Virginia, party of the first part, and Simmons Creek Coal Company, party of the second part, witnesseth:

That, for and in consideration of the sum of one dollar in hand paid, the receipt of which is hereby acknowledged, and other valuable consideration, the said party of the first part has this day granted and conveyed, and by these presents doth grant and convey, unto the said party of the second part the following real estate, to wit, three-eighths (3/8), undivided, of a certain tract or parcel of land situate in the county of Mercer and State of West Virginia, on Simmons creek, containing, by recent survey, by horizontal measurement, one hundred and seventy and one-half acres, it being a part of the interest in the same tract of land conveyed by George W. Belcher and wife to said N. L. Reynolds by deed bearing date on the 4th day of December, 1884. For a more particular

description of said land reference is made to the description of same in a deed executed by George W. Belcher and wife to P. H. Rorer on the 25th day of February, 1885, and of record in Mercer county court clerk's office, which description is made part of this deed; and the party of the first part covenants that he will warrant specially the title to the property hereby conveyed.

Witness the following signature and seal.

N. L. REYNOLDS. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

109 I, C. W. Straley, a notary public in and for the county and State aforesaid, do certify that N. L. Reynolds, whose name is signed to the foregoing and annexed writing, bearing date on the 28th day of February, 1885, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 28th day of February, 1885.

C. W. STRALEY, *N. P.*

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

MARCH 18, 1885.

This day the foregoing writing was presented in said office and, together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 28th day of August, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 50 cts., ch'g'd to Simmons C'k Coal Co.

And at another day, to wit, at a district court of the United States held for the district of West Virginia, at Charleston, in said district, on the 9th day of November, 1885, among the proceedings had was the following:

JOS. J. DORAN, Comp't,
vs.
SIMMONS CREEK COAL COMPANY & *als.*, Def'ts. } In Equity.

The defendants, N. L. Reynolds and G. W. Belcher, this day filed their separate answers to the bill, and the complainant
110 replies generally to said answers; and, on motion of all the defendants to this suit, a rule for security for costs is awarded them against the complainant.

(Answer of N. L. Reynolds, referred to in the foregoing order, is in the words and figures following, to wit:)

The separate answer of N. L. Reynolds to a bill of complaint exhibited in your honor's court against him and the Simmons Creek Coal Company and others by Joseph I. Doran.

To the Hon. John J. Jackson, judge of the district court of the United States for the district of West Virginia, sitting at Charleston, in said district:

This respondent, for answer to so much of said bill as he is advised it is material for him to answer, says that it is true, as stated in complainant's bill, that George W. Belcher and wife, on the 4th day of December, 1884, conveyed to this respondent five-eighths, undivided, of the tract of land which is now claimed and owned by the Simmons Creek Coal Company, a certified copy of which deed is filed with the answer of Simmons Creek Coal Company and is here referred to and made part of this answer. Respondent, further answering, says that he purchased the said land for a fair and valuable consideration from the said George W. Belcher; that he paid all of the purchase-money therefor, obtained the legal title thereto, and had his deed duly recorded in the county court clerk's office of Mercer county, and that he never had any notice whatever of the complainant's pretended rights and pretended secret equity; and he denies that the complainant had any right or title whatever to the said tract of land now claimed and owned by the Simmons Creek Coal Company.

And respondent, further answering, says that if the complainant's bill attempts to charge him with fraud or unfair dealing he denies the same in the most positive terms.

111 Respondent, having fully answered so far as it is material for him to answer, prays to be hence dismissed with his costs.

N. L. REYNOLDS,
By Counsel.

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do hereby certify that N. L. Reynolds, the defendant named in the foregoing answer, this day personally appeared before me in my county and State aforesaid, and, being by me first duly sworn, deposes and says that the facts and allegations in said answer stated and made so far as they are stated and made in his own knowledge are true, and that so far as they are stated and made on the information of others he believes them to be true.

Given under my hand and seal of my office this the 3rd day of November, 1885.

C. W. STRALEY,
N. P., Mercer County, W. Va.

Deed from Geo. W. Belcher and wife to N. L. Reynolds, and filed with the answer of the Simmons Creek Coal Co., referred to and made a part of this answer, is in the following words and figures:

This deed, made this 4th day of December, 1884, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and Newton L. Reynolds, of the county and State aforesaid, of the second part, witnesseth:

That, for and in consideration of the sum of sixty-six dollars and ten cents, the receipt of which is hereby acknowledged by the parties of the first part, and other valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part the
112 undivided five-eighths part of the following tract or boundary of land, situate and being in the county of Mercer and State of West Virginia, on the waters of Simmons creek, a branch of Bluestone river, and being the same tract or boundary of land conveyed by Chrispianos Belcher to George W. Belcher by deed bearing date on the 18th day of October, 1884, and the same tract or boundary of land conveyed by R. B. McNutt, commissioner of school lands for Mercer county, to George W. Belcher by deed bearing date on the 3rd day of December, 1884, and bounded as follows, to wit: Beginning at two birches on the bank of Simmons creek in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obediah Belcher and a corner to the William H. Witten land, and with a line of the said Witten land N. 50° 40′ W. 85.40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of said ridge, to six dead chestnuts on said ridge, a corner to A. G. Belcher's land, and with a line of same N. 49° 10′ E. 25.00 chains, crossing a branch of Simmons creek at 15.00 chains, to a white oak and two spruce pines on another branch of said Simmons creek; N. 89° 10′ E. 35.25 chains, crossing hollows and ridges and the middle fork of said Simmons creek, to two spruce pines and a white oak about ¾ chain from said fork; thence down Simmons creek, with the meanderings thereof, S. 33° 30′ W. 9.20 chains, S. 3° 40′ W. 8.19 chains, to a spruce pine, a corner to Henry Sadler's land, and with said Sadler's line continuing down said Simmons creek, S. 1° 30′ E. 5.56 chains, S. 26° W. 3.33 chains, S. 27° E. 5.52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9° 30′ E. 3.57 chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46° E. 4.72 chains, S. 5° 30′ E. 83 links to the beginning, said boundary containing by recent survey one hundred and eighty-five acres; and the said parties of the first part covenant with the party of the second part that they will warrant specially the title to the
113 property hereby conveyed; to have and to hold the said real estate and premises unto the said party of the second part, his heirs and assigns forever.

Witness the following signatures and seals.

GEO. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

WEST VIRGINIA, } *To wit:*
Mercer County, }

I, Christian Belcher, a notary in and for the county of Mercer and State of West Virginia, do certify that Geo. W. Belcher, whose name is signed to the writing above, bearing date on the 4th day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER, *N. P.*

WEST VIRGINIA, } *To wit:*
Mercer County, }

I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that Mary Belcher, the wife of the said George W. Belcher, whose name is also signed to the writing above, bearing date on the 4th day of December, 1884, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having the said writing fully explained to her, she, the said Mary Belcher, acknowledged said writing to be her act, — declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER,
N. P., Mercer County, W. Va.

114 WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6TH, 1884.

This day the foregoing writing was presented in said office and, together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, } *To wit:*
County of Mercer, }

I, Sam'l P. Pearis, clerk of the county court of Mercer county, W. Va., do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 24th day of January, 1885.

SAM'L P. PEARIS, *Clerk.*

(The answer of George W. Belcher, referred to in the foregoing order of court, made on the 9th day of November, 1885, is in the words and figures following, to wit:)

The separate answer of George W. Belcher to a bill of complaint exhibited in your honor's court against him and others by Joseph I. Doran.

To the Hon. John J. Jackson, judge of the district court of the United States for the district of West Virginia, sitting with circuit court powers, at Charleston, in said district:

This respondent, for answer to said bill or so much thereof as he is advised it is material for him to answer, says that it is true as stated in the complainant's bill that his codefendant, Chrispianos Belcher, was, in the year 1842, the owner in fee of a tract or boundary of land called 1,500 acres, situate in the county of Mercer, on the waters of Flipping creek, Simmons creek, and other tributaries of Bluestone river, and that the said Chrispianos Belcher sold
115 and by divers deeds conveyed, many years ago, to various parties the whole of the said boundary of land called 1,500 acres, except as hereinafter stated.

Further answering, respondent says that the said Chrispianos Belcher was the owner of the residue of said boundary of land called 1,500 acres, to wit, the tract of two hundred acres claimed by the complainant and the tract now owned by the Simmons Creek Coal Company; that in the year 1884 the said Chrispianos Belcher sold and conveyed to this respondent the tract of land now claimed and owned by the said Simmons Creek Coal Company, which is described and bounded as follows in this respondent's said deed from Chrispianos Belcher: "Beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a white oak and two pines on a branch of Simmons, corner to Witten and Graham "Payne tract;" N. 85 E. 134 poles with the Payne line to two pines and a white oak on another branch of Simmons, corner to 400 acres deed- by Chrispianos Belcher to Obediah Belcher; thence down Simmons — with the meanders thereof to the beginning."

Further answering, respondent says that after he had obtained his deed of conveyance from the said Chrispianos Belcher he feared that the said tract of land so conveyed to him had been forfeited to the State for non-entry for taxation on the land books of Mercer county, and he therefore filed his petition in the circuit court of Mercer county, exhibiting his claim and title to said boundary of land and asking to be allowed to redeem and purchase said land for the taxes, damages, and interest thereon and the costs, which he was allowed to do; and thereupon, pursuant to an order of said circuit court, R. B. McNutt, commissioner of school lands for
116 said county, conveyed to him by proper deed the State's right, title, and interest in and to said tract of land, all of which will more fully appear by certified copies of said petition, proceedings, and deed of commissioner, filed with the answer of co-respondent, Simmons Creek Coal Company.

Respondent further says that afterwards he and his wife conveyed the said tract of land to N. L. Reynolds and P. H. Rorer, which was

afterwards conveyed to the Simmons Creek Coal Company, as stated in the answer of the said Simmons Creek Coal Company, all of which deeds are exhibited with the answer of codefendant, Simmons Creek Coal Company, and are here referred to as part of this answer.

Further answering, respondent says that he denies that Chrispianos Belcher ever executed and delivered a deed to Robert D. Belcher conveying the 200 acres claimed by complainant, or that it embraced any part of the tract owned by this respondent. Respondent admits that the said Robert D. Belcher conveyed a tract of land called 200 acres, more or less, to Wm. H. Witten, which is part of the same now claimed by complainant; that this deed conveys by metes and bounds and is a matter of record; that said deed calls for "beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up said creek with Miller's line S. 55 W. 120 poles to six chestnuts, corner to Miller's survey, and with the same S. 35 E. 310 poles to a double and single poplar, corner to said Belcher, and with the same N. 40 E. 250 poles to the beginning." That it is true that the general bearing of the said line from the two birches to the six chestnuts is up Simmons creek; yet this respondent positively denies that said line runs or was ever intended to run up Simmons creek with the meanders thereof; and further denies that the said 200-acre tract claimed by the complainant embraces one foot of the tract of land conveyed to
117 this respondent and now owned by Simmons Creek Coal Company.

This respondent avers the truth to be that the true and proper line, which is the line claimed by this respondent, is a straight or direct line from the two birches to the six chestnuts, and that this is the only correct, just, proper, and legal construction as to the location of said line as it is set forth and described in the deed from said Robert D. Belcher to Wm. H. Witten, under which the complainant claims.

Respondent, for further answer to said bill, denies that there was any mistake made in the calls of the said deed from Robert D. Belcher to Wm. H. Witten except in the degree and distance given, the call in the deed being "S. 55 W. 120 poles" from the two birches to the six chestnuts, when in fact the true call is N. 55 W. to the six chestnuts, and by running the true course and distance, as stated, the complainant still has within his boundary 225 acres, which is all the land he is entitled to claim under the said deed from Robert D. Belcher to Witten; but respondent again denies that the said Robert D. Belcher ever had any title to the land which is actually embraced in the said deed from him to Witten, and if he had had title to same this respondent positively denies that said deed embraces any of the land which was conveyed to this respondent by Chrispianos Belcher and which is now claimed and owned by the Simmons Creek Coal Company.

Respondent further denies that the said Robert D. Belcher, the said Witten, his vendee, or any other claiming under them, have ever had any actual possession of said tract of two hundred acres of

land or any part thereof, nor had the said Witten at any time actual possession of the 1,100-acre tract referred to in complainant's bill.

Further answering, respondent says that the two birches
118 and the six chestnuts are well known and recognized corners and have been so known and recognized for many years both by Robert D. Belcher and Chrispianos Belcher, and that the said Robert D. Belcher and the said William H. Witten long lived (and the said Witten now lives) in the immediate vicinity of this land, and respondent avers that they were altogether familiar with the corner to said land and all the water-courses thereon, and that said Witten claims to have held under said deed from Robert D. Belcher for a period of more than thirty years, and now, after this long lapse of time and this long acquiescence and silence of Witten on the subject of a mistake of boundary, this respondent for the first time hears it from the complainant's bill, and this, too, after most of the old men living in the neighborhood are dead and gone and the recollections of the transactions, if any there were, between the said Chrispianos and Robert D. Belcher faded from the memory of those living.

Respondent denies that the line of the said two hundred acres running from the birches up Simmons creek was defectively described in the deed from Chrispianos Belcher to Robert D. Belcher, and he further denies that the line described by the complainant in his bill and referred to in the map therewith exhibited was what was meant and intended both by the grantor and grantee in said deed, and he repeats his denial that there ever was a deed for said land from Chrispianos Belcher to Robert D. Belcher, or that such deed was ever lost, mislaid, or made away with by parties claiming adverse to complainant or those under whom he claims; and he further denies that the description in the deed from Robert D. Belcher to Witten for said land is also defective, as alleged in complainant's bill, or that it runs, as claimed by complainant, or that the same was intended to run, as claimed by complain-
119 ant, by both parties to said deed.

Respondent further denies that the said Wm. H. Witten ever claimed the line of said 200-acre tract to commence at the said two birches and to run up Simmons creek and up the left-hand fork thereof and to the said six chestnuts, but respondent avers that said Witten did claim from the said two birches a straight line to the six chestnuts.

This respondent purchased said tract of land from Chrispianos Belcher for a fair and valuable consideration, and, without notice of said pretended equity or rights of the complainant, paid all the purchase-money therefor, and had obtained the legal title thereto long before the complainant had obtained his pretended deed from said Chrispianos Belcher of April 2nd, 1885, and with notice of this respondent's title, which was and is of record, and that the boundary line between respondent's said tract of land (which is now the property of said Simmons Creek Coal Company) and that claimed by the complainant was from the two birches a straight line to the six

chestnuts, the complainant, in the face of all this notice and knowledge furnished him by the record, went to work deliberately to hatch up his pretended secret equity to this land and to assert it in a court of conscience against this respondent, a complete purchaser for a valuable consideration without notice of any equity or rights claimed by the complainant, and this respondent here again positively denies, on his solemn oath, that he ever had any notice whatever of the complainant's pretended equity or rights of any kind whatever.

Further answering, respondent positively denies that the proceeding had by him in the circuit court of Mercer county for the redemption and purchase of said tract of land was irregular, null, and void, and he denies that the complainant had any right
120 to be heard in said proceedings or was entitled to any notice in regard thereto.

If said land was forfeited respondent insists that he had the right to remove the cloud from his title, and that the matter was one between him and the State and with which the complainant has nothing to do.

The State is not complaining and the complainant has no right to complain. Respondent positively denies that said proceeding was had and his said deed from Chrispianos Belcher procured by him with intent and desire and for the purpose of cheating and defrauding the complainant or any one else, and respondent says that the charge in complainant's bill that said proceeding was gotten up and carried out expressly with a view of assisting the said Simmons Creek Coal Company to get the said land by a title which it was believed would enable it to hold it against the complainant is not true, but is wholly false, and said charge is positively denied by this respondent.

This respondent denies that the plaintiff has any right or title whatever to the said tract of land now claimed and owned by the Simmons Creek Coal Company.

Respondent, further answering, says that the alleged mistake set up in the bill in the deed from Chrispianos Belcher to Robert D. Belcher never existed and was never made, and this — apparent from the following facts:

1st. The true method of running the line between the birches and the chestnuts has *ante litam motam* and more than thirty years ago been acquiesced in by the remote grantors of the complainant, under whom he now claims title, to wit, Robert D. Belcher and William H. Witten. See Complainant's Exhibit A No. 1, where the straight line between the birches and chestnuts is called for.

121 2nd. The true method of running said line (a straight line) is acquiesced in by the remote but common grantor of both complainant and respondent in the deed from Chrispianos Belcher to this respondent, dated October 18th, 1884 (Exhibit B No. 2 filed with the bill), thus showing an acquiesence in the straight line from 23rd December, 1852, to 18th October, 1884, a period of more than thirty years.

Respondent denies every charge of fraud or unfair dealing in complainant's bill not heretofore specifically denied; and, having

fully answered, this respondent prays to be hence dismissed with his costs.

GEORGE W. BELCHER,
By Counsel.

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, C. W. Straley, a notary public in and for the county and State aforesaid, do hereby certify that George W. Belcher, the defendant named in the foregoing and annexed answer, this day personally appeared before me in my said county and State, and, being by me first duly sworn, deposes and says that the facts and allegations in said answer stated and made so far as they are stated and made in his own knowledge are true, and that so far as they — stated and made on the information of others he believes them to be true.

Given under my hand and the seal of my office this 2nd day of October, 1885.

[SEAL.]

C. W. STRALEY,
N. P., Mercer County, W. Va.

(The deed from Geo. W. Belcher to N. L. Reynolds, referred to in above answer of Geo. W. Belcher, is in the words and figures
122 following, to wit:)

This deed, made this the 4th day of December, 1884, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and Newton L. Reynolds, of the county and State aforesaid, of the second part, witnesseth: That, for and in consideration of the sum of sixty-six dollars and ten cents, the receipt of which is hereby acknowledged by the parties of the first part, and other valuable consideration, the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part the undivided five-eighths part of the following tract or boundary of land, situate and being in the county of Mercer and State of West Virginia, on the waters of Simmons creek, a branch of Bluestone river, and being the same tract or boundary of land conveyed by Chrispianos Belcher to George W. Belcher by deed bearing date on the 18th day of October, 1884, and the same tract or boundary of land conveyed by R. B. McNutt, commissioner of school lands for Mercer county, to George W. Belcher by deed bearing date on the 3rd day of December, 1884, and bounded as follows, to wit: Beginning at two birches on the bank of Simmons creek in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obediah Belcher and a corner to the William H. Witten land, and with a line of the said Witten land N. 50 40′ W. 85.40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of said ridge, to six dead chestnuts on said ridge, a corner to A. G. Belcher's land, and with a line of same N. 49° 10′ E. 25.00 chains, crossing a branch of Simmons creek at 15.00 chains, to a white oak and two spruce pines on another branch of said Simmons creek; N. 89° 10′ E. 25.35 chains, cross-

ing hollows and ridges and the middle fork of said
123 Simmons creek, to two spruce pines and a white oak about ¾ chain from said fork; thence down Simmons — with the meanderings thereof S. 33° 30′ W. 9.20 chains, S. 3° 40′ W. 8.19 chains to a spruce pine, a corner to Henry Sadler's land, and with said Sadler's line, continuing down said Simmons creek, S. 1° 30′ E. 5.56 chains, S. 26° W. 3.33 chains, S. 27° E 5.52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9° 30 E. 3.57 chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46° E. 4.72 chains, S. 5° 30′ E. 83 links to the beginning, said boundary containing, by recent survey, one hundred and eighty-five acres; and the said parties of the first part covenant with the party of the second part that they will warrant specially the title to the property hereby conveyed; to have and to hold the said real estate and premises unto the said party of the second part, his heirs and assigns forever.

Witness the following signatures and seals.

GEORGE W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that George W. Belcher, whose name is signed to the writing above, bearing date on the 4th day of December, 1884, has this day acknowledged the same before me in my said county and State.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER, *N. P.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

124 I, Christian Belcher, a notary public in and for the county of Mercer and State of West Virginia, do certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the writing above, bearing date on the 4th day of December, 1884, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having the said writing fully explained to her, she, the said Mary Belcher, acknowledged the said writing to be her act, — declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this the 5th day of December, 1884.

CHRISTIAN BELCHER,
N. P., Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

DECEMBER 6TH, 1884.

This day the foregoing writing was presented in said office and,

together with the certificates thereon endorsed, duly admitted to record therein.

Teste: CHAS. R. McNUTT, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, W. Va., do hereby certify that the foregoing writing is a true and correct copy from the records in my office.

Given under my hand this 24th day of January, 1885.

SAM'L P. PEARIS, *Clerk.*

(The deed referred to in the above answer of George W. Belcher from George W. Belcher to P. H. Rorer is in the words and figures following, to wit:)

This deed, made this 25th day of February, 1885, between George W. Belcher and Mary Belcher, his wife, of the county of Mercer and State of West Virginia, parties of the first part, and P.
125 H. Rorer, of Roanoke, Virginia, party of the second part, witnesseth: That the said George W. Belcher and Mary Belcher, his wife, for and in consideration of the sum of six thousand three hundred and ninety-three dollars and seventy-five cents—five hundred dollars, part of said sum, in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the residue of said sum to be paid hereafter, as evidenced by bonds executed by the said P. H. Rorer to said George W. Belcher for the same—do hereby grant, bargain, sell, release, and confirm, with covenants of general warranty of title, to the said P. H. Rorer and his heirs and assigns forever three-eighths ($\frac{3}{8}$), undivided, of a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, in the county of Mercer and State of West Virginia, it being the same tract five-eighths ($\frac{5}{8}$), undivided, of which has heretofore been conveyed by the said parties of the first part to N. L. Reynolds, and containing, by recent survey, by horizontal measurement, one hundred and seventy & $\frac{5}{10}$ acres, and bounded as follows: Beginning at two birches on the bank of Simmons creek, N. 59° 26′ W. 80.83 chains up Simmons creek, crossing ridges and spur, to six dead chestnuts on a ridge, corner to A. G. Belcher; N. 48° 57′ E. 24.15 chains with a line of A. G. Belcher, crossing a branch of Simmons creek and a ridge, to two spruce pines and a fallen white oak on the bank of a branch of Simmons creek, corner to the Payne tract; S. 88° 50′ E. 32.40 chains with a line of said Payne tract, crossing ridges and branches of Simmons creek, to a white oak and two spruce pines on the bank of the middle fork of Simmons creek; thence down said creek with its meanderings S. 33° W. 8.61 chains, S. 3° 50′ W. 4.95 chains, S. 5° 35′ W. 3.98 chains to a spruce pine, corner to Henry Sadler's land, and continuing down said creek with the meanderings thereof S. 1° 30′ E. 5.56
126 chains, S. 26° W. 3.30 chains, S. 27° E. 5.52 chains, S. 15° 30′ E. 4.49 chains, S. 22° E. 9.00 chains, S. 9° 30′ E. 3.57

chains, S. 17° E. 2.10 chains, S. 12° E. 3.21 chains, S. 24° 30′ E. 10.77 chains, S. 8° 30′ E. 6.71 chains, S. 46° E. 4.72 chains to lyndens, lower corner to the said Sadler land; S. 5° 30′ E. 83 links to the beginning, together with all the appurtenances to the said land belonging; to have and to hold the said interest in the said tract of land, with all its appurtenances aforesaid, unto the said P. H. Rorer, his heirs and assigns forever.

And the said parties of the first part, for themselves and their heirs, do covenant and agree with the said P. H. Rorer, his heirs and assigns, in manner and form following, to wit: That the said George W. Belcher is seized in fee simple and has good right to convey the said property hereinbefore mentioned and conveyed to the said P. H. Rorer in fee simple; that the said P. H. Rorer, his heirs and assigns, shall have quiet and peaceable possession of the said property hereby conveyed and its appurtenances aforesaid forever; that the said tract of land is free from all incumbrances or charges whatsoever; that they will warrant and defend the said property against all persons whatsoever, and that they will execute such further assurances as and for the said land as may be requisite to make the title thereto of the said P. H. Rorer, his heirs and assigns, sure and complete forever; but the said parties of the first part expressly reserve their vendor's lien for the sum of five thousand eight hundred and ninety-three dollars and seventy-five cents, it being the balance of purchase-money yet unpaid therefor.

Witness the following signatures and seals.

G. W. BELCHER. [SEAL.]
MARY BELCHER. [SEAL.]

WEST VIRGINIA, *Mercer County,* } *To wit:*

127 I, Christian Belcher, a notary public in and for the county and State aforesaid, do certify that George W. Belcher, whose name is signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, has this day acknowledged the same before me in my said county and State; and I do further certify that Mary Belcher, wife of the said George W. Belcher, whose name is also signed to the foregoing and annexed writing, bearing date on the 25th day of February, 1885, this day personally appeared before me in my said county and State, and, being examined by me privily and apart from her said husband and having said writing fully explained to her, she, the said Mary Belcher, acknowledged said writing to be her act, — declared that she had willingly executed the same and that she does not wish to retract it.

Given under my hand this 26th day of February, 1885.

CHRISTIAN BELCHER,
N. P., Mercer County, W. Va.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

FEBRUARY 28, 1885.

This day the foregoing writing was presented in said office and,

together with the certificate thereon endorsed, duly admitted to record therein.

Teste: SAM'L P. PEARIS, *Clerk.*

STATE OF WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 19th day of March, 1885.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, $1.10.

S. P. P., *Clk.*

128 (Ex. referred to in the answer of George W. Belcher, deeds from N. L. Reynold and P. H. Rorer to the Simmons Creek Coal Company, are heretofore copied as exhibits with the bill.)

And at another day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston, in said district, on the 4th day of November, 1886, among the proceedings had was the following:

JOSEPH I. DORAN, Compl't,
vs.
SIMMONS CREEK COAL COMPANY, & Others, Def'ts. } In Chancery.

The defendant, P. H. Rorer, this day filed his answer to the bill, to which the complainant replies generally; and thereupon, on motion of the complainant, it is ordered that Abel P. Sinnett do go upon the lands in controversy and do such surveying as either party may desire, and that such surveyor do return three reports and six plats of his said survey; but before making such survey the said surveyor is required to give notice to the counsel of record of both parties ten days before the commencement of such survey.

And, on motion of complainant, this cause is continued till the next term.

(The separate answer of P. H. Rorer, referred to in the foregoing order, is in the words and figures following, to wit:)

In the United States District Court for the District of West Virginia, at Charleston.

JOSEPH I. DORAN
vs.
SIMMONS CREEK COAL CO. *et al.*

The Separate Answer of P. H. Rorer to the Bill.

This respondent has read the answer of his codefendant, The Simmons Creek Coal Company, and he adopts and relies on
129 the same in the same manner as if all the allegations of said answer were herein again repeated.

And, in addition to said allegations, he alleges that he is the vendor of his codefendant and is interested in the result of this suit, and that if all the allegations in the bill were true that the complainant would not be entitled to the relief prayed for in said bill for the following reasons:

The legal title to the land in controversy was originally in Chrispianos Belcher, under whom both complainant and defendant, Simmons Creek Coal Company, claim title.

The title of Simmons Creek Coal Company is derived by a regular chain of deeds, all of which have been duly and regularly recorded according to law in the county in which the land is situated, as fully appears by office copies of said deeds filed with the bill and the answer of the Simmons Creek Coal Company.

The original vendee of Chrispianos Belcher, who was George W. Belcher, acquired title from said Chrispianos Belcher for a valuable consideration, recited in his deed, and without notice of the equity set up in the bill.

This respondent and N. L. Reynolds also acquired title to the lands in controversy, also for valuable considerations and without notice.

And the defendant, The Simmons Creek Coal Company, also acquired title from respondent and N. L. Reynolds for a valuable consideration without notice, all of which fully appears by reference to said deeds, which form the chain of title to the lands in controversy as vested in the Simmons Creek Coal Company, while the complainant claims title to the lands in controversy through an alleged deed from the said Chrispianos to Robert D. Belcher, and the existence and loss of which last-mentioned deed has not yet
130 been proved. It has never been recorded in the clerk's office of the proper county as required by law, and no notice of the existence of any such last deed has ever been brought home to the Simmons Creek Coal Company or to any of its vendors.

Respondent also specifically denies that the 1,100-acre tract of land alleged in the bill to have been purchased by Wm. H. Witten from Robert D. Belcher and Chrispianos Belcher in any way approaches the two birches that are a corner to the 200-acre tract purchased by said Witten from said Robert D. Belcher, or includes any part of said 200-acre tract.

Respondent therefore prays that the bill be dismissed with costs.

P. H. RORER,
By Counsel.

A. W. REYNOLDS, *Attorney.*

STATE OF VIRGINIA, }
Roanoke County, } *To wit:*

This day P. H. Rorer personally appeared before the undersigned authority and made oath that the matters of fact alleged in said answer, so far as stated upon his own knowledge, are true, and so far as they are stated on the knowledge of others he believes them to be true.

Given under my hand and notarial seal this the 11th day of September, 1886.

[SEAL.] T. F. BARKSDALE,
Notary Public for Roanoke County, in the State of Virginia.

And at another day, to wit, in the clerk's office of the district court of the United States for the district of West Virginia, at Charleston, March 26th, 1887.

JOSEPH I. DORAN
vs.
SIMMONS CREEK COAL COMPANY. } In Chancery.

131 This day A. P. Sinnett, surveyor in this cause, returned to this office his report and plats heretofore directed to be made in this cause, which are filed.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

(The report and map of A. P. Sinnett, surveyor, referred to in the foregoing order is in the words and figures following, to wit:)

District Court of the United States for the District of West Virginia, at Charleston, West Va.

JOSEPH I. DORAN
vs.
SIMMONS CREEK COAL CO. & Others. } In Chancery.

To his honor J. J. Jackson, Jr., judge of the said court:

The undersigned surveyor, in obedience to an order of your honor's court made in the above-entitled cause on the 4th day of November, 1886, submits the following report, viz:

That pursuant to notice given to James H. Ferguson and William A. Quarrier, attorneys in the said cause, I went, on Monday the 14th day of February, 1887, to the two birches on Simmons creek, a tributary of Bluestone river, in Mercer county, West Virginia. Said trees are admitted by both parties to be corner to the land in controversy and designated on the accompanying plat by the letter (A). Present: Wm. Ingles, who appeared for the plaintiff. No one appeared for the defendants. I adjourned the survey until the 15th. Tuesday, the 15th, it rained. I adjourned the survey until the 16th. Wednesday, the 16th, met pursuant to adjournment at the two birches. Present: Wm. Ingles, on the part of the plaintiff, and A. W. Reynolds, N. L. Reynolds, and George W. Belcher, on the
132 part of the defendants, with G. W. Atkinson and R. W. Witten as my chainmen and —— Evans as my flagman. At the instance of the plaintiffs I ran from said birches N. 5° W. 2 poles and 23 links to two lynn stumps at (—), admitted by the parties to be corner to Henry Sadler's land. I ran thence S. 58° 30′ W. 42 poles, offset right 9 links; thence S. 60° 30′ W. 64 poles, offset right 7 links; thence S. 62° 45′ W. 46 poles — a branch of Simmons creek,

nearly north; course continued on this bearing, in all 94 poles, to a stake and two gums by a branch; thence S. 61° 15′ W. 26 poles and 8 links to a stake and stone pile and pointers at (B), admitted by both parties to be on a line run by Philip Lybrook from the mouth of Laurel creek, on Bluestone —, N. 9° 30′ W. as the west line of the Wilson Cary Nicholas survey of 500,000 acres; course continued S. 61° 15′ W. 30 poles & 18 links to a double and single poplar at (C). Said trees are marked on two sides as corner trees, viz., on the side facing about north and on the side facing about N. 60° E. These trees are admitted by both parties to be a corner called for in deed of *Report* D. Belcher to William H. Witten, dated December 25th, 1852; true course and distances from the two birches to the double and single poplars is 61° 51′ W. 257 poles. I then returned to the stake and stone pile at (B), and ran thence N. 9° 30′ W., crossing a branch of Simmons creek at 8 poles and another at 17 poles, crossing a ridge at 64 poles, a branch east at 102 poles, the top of a ridge at 144 poles, a branch easterly at 204 poles, a ridge at 290 poles, in all 323 poles & 13 links, to six chestnuts on a ridge at (D). The chestnuts are all dead and the bark off. They have been marked as corner trees on the sides facing about S. 50° W. and on the sides facing about N. 50° E. I find the true bearing and distance from the double and single poplars to the six chestnuts to be N. 4° 30′ W. 335 poles. I then ran from the six chestnuts N. 49° 30′ E., cross-
133 ing a branch southeasterly at 58 poles, the top of a ridge at 80 poles, Simmons creek or a large fork of same at 96 poles, in all 98 poles, right angle left 24 links, to a stake and spruce pine & white oak at (E). I then ran down said creek S. — E. 15 poles & 13 links; thence S. 57° 30′ E. 26½ poles, S. 60° 30′ E. 3½ poles, S. 46° E. 7½ poles, S. 29° 30′ E. 12½ poles, S. 22° E. 7 poles, S. 16° 30′ E. 12 poles, S. 41° E. 7 poles to the mouth of a large branch on the right; same course continued, in all 10 poles, S. 58° 30′ E. 16½ poles, S. 56° E. 12 poles, S. 64° 30′ E. 27 poles & 5 links to the forks of the creek at (F); then, by consent and request of both parties, I report lines run by me in October, 1886, at the instance of the Simmons Creek Coal Company and when Wm. Ingles was present and the parties being satisfied that by going over same the result would not be changed; thence down the creek S. 26° W. 3 poles to station (I); thence S. 27° E. 24 poles to a stake at (J); thence S. 19° E. 94 poles to the corner of a house at (K); thence S. 25° 15′ E. 25 poles and 21 links to a stake at (L); thence S. 13° 15′ E. 33 poles & 14 links to a stake at (M), the forks of the creek; thence S. 39° 30′ E. 14 poles to the two birches, the place of beginning, the plaintiffs' agent then not desiring any farther surveying done at the time.

I then, at the instance of defendants, went to a stake on the ridge S. 9° 30′ E. 33½ poles from the six chestnuts at (21), and ran thence S. 52° E. 34 poles; thence N. 87° 30′ E. 21 poles to the head of a branch of Simmons creek at (22); thence down the said branch S. 34° E. 17 poles and 8 links; thence S. 21° E. 8 poles, S. 23° 45′ E. 20 poles, S. 17° 45′ E. 18 poles, S. 41° E. 34 poles, S. 43° 30′ E. 27

poles, S. 6° 30′ E. 15 poles; thence S. 44° E. 6 poles to the mouth of a large branch on the right; thence S. 69° E. 6 poles & 18 links, S. 89° E. 19 poles, S. 52° E. 8 poles, S. 53° 45′ E. 40 poles to
134 the mouth of a large branch — right; thence N. 81° 30′ E. 11 poles, N. 85° E. 15 poles, S. 78° 15′ E. 12½ poles, N. 85° E. 10 poles to the fork of the creek at Teeman and Jones' engine at (M); thence S. 59° 30′ E. 14 poles & 7 links to the two lynn stumps; thence, at the instance and request of defendants and with the consent of the plaintiffs' agent, Wm. Ingles, I report under this order the surveying which I did at the instance of the defendants in October, 1886, as follows: Beginning at the two birches at (A) and running thence N. 50° 10 W. 328 poles to six chestnuts on a ridge at (D), claimed by defendants to be a corner to William H. Witten's land, and so recognized by I. A. Welch and William Ingles, who were present at said trees, and from what I learned from those present I think they are generally known as the six chestnuts, corner to four tracts of land, and run to and from by said Ingles, agent of the Southwest Virginia Improvement Company, and Capt. I. A. Welch, and perhaps others, when surveying the different tracts of land cornering on said trees. I ran thence for the second call of said deed N. 49° 30′ E., crossing a branch running to my right at 58 poles and the west fork at 95 poles, in all 97 poles and 22 links, to a white oak and spruce pine, marked as corner trees, on the east bank of the west fork of said creek at (E) on the accompanying plat, and recognized by persons present as corner to the Belcher, Miller, and Payne land. I ran thence for the third call of deed S. 88° 30′ E., crossing a drain right at 42 poles & 18 links, another drain S. 20° E. at 97 poles, at 131 poles & 18 links the middle fork of Simmons creek, in all 135 poles, to two pines and a white oak on the east side of said fork at (3), marked as corner trees and claimed by the Simmons Creek Coal Company as corner to their land. I ran thence for the fourth call of deed down said middle fork S. 35° W. 35 poles to a stake (—); thence S. 3° 50′ W. 19 poles to a
135 stake at (—); thence S. 7° 30′ W. 15 poles and 21 links to a stake, spruce pine, and birch at (V), corner to land of Henry Sadler and Mary E. Barcroft; thence S. 1° 30′ E. 21 poles to (H); thence S. 26° W., passing the junction of the middle and west forks at 9 poles, in all 12 poles, to a stake at (I); thence S. 27° E. 24 poles to a stake at (J); thence S. 19° E. 94 poles to the corner of a house at (K); thence S. 25° 15′ E. 25 poles & 21 links at stake at (L); thence S. 13° 15′ E. 33 poles and 14 links to a stake at (M) at the forks of the creek; thence S. 39° 30′ E. 14 poles to the two birches, the place of beginning, containing — acres.

Saturday, February 19th, I went, at the instance of plaintiff's counsel, to two spruce pines and poplar standing on the bank of Flipping creek, at the mouth of a small left-hand branch, and designated by the letter (N) and claimed by plaintiffs as the beginning corner called for in deed from Chrispines Belcher to Obediah Belcher, dated July 20th, 1844, and which calls for same as corner to Wm. Miller, and with his line, &c., from one of said spruce pines I took a block, Exhibit No. 1 (present, Wm. Ingles, Wm. Graham, N. L.

Reynolds, R. W. Witten, G. T. Deaton, and J. C. Hulbrook, with R. W. Witten, G. T. Deaton, as my chainmen and J. C. Hulbrook as my flagman). I ran thence with the calls of said deed of C. Belcher to O. Belcher N. 85° 15′ W. 93 poles to a chestnut and white oak on a ridge at (O), the white oak dead, both marked as corner trees and look tolerably old. I then ran S. 81° 9′ W. 29 poles to a large white oak at (P) on the ridge; this tree is down; I saw three marks on one side of same; thence S. 78° 21′ W. 41½ poles to a large chestnut oak on a ridge near a road at (Q)—two chestnut oaks are called for, one standing and plainly marked as a corner; then ran S. 59° 30′ W. 74⅜ poles to a spruce pine and white oak at (R). These
136 trees are called for in said deed as a double maple, spruce pine, and white oak, corner to Miller. There is a single maple standing near the pine and white oak; did not see any marks on it. The pine and white oak are marked on three sides as corner trees—on the side facing about N. 60° E., on the side facing about S. 25° E., and on the side nearly west from the white oak facing about N. 60°. I took a block, made Exhibit No. 2; I then ran down the east fork of Simmons creek S. 23° 30′ E. 19¾ poles to a spruce pine at (S) on the bank of the east fork, claimed by plaintiffs to be the beginning corner called for in deed of O. Belcher, dated 25th October, 1870. I did not block this tree; the marks look as if they are from 15 to 18 years old. I ran thence according to the calls of said deed N. 89° 30′ W. 32½ poles to a maple and two spotted oaks by the fence at (T); thence S. 79° 35′ W. 22¼ poles to a chestnut and chestnut oak on a ridge at (U), marked as corner trees; thence S. 76° 51′ W., a small branch s'w'ly at 35¾ poles, in all 124¼ poles, to a spruce pine and birch on the middle fork of Simmons creek at (V), corner to Henry Sadler's land—these trees are marked as corner trees; then, at the instance of plaintiff's counsel, I ran thence N. 88° 38′ W., crossing the middle fork of Simmons creek at the corner, the top of ridge at 27 poles, Simmons creek or large fork of same at 55 poles; thence nearly up a branch of and crossing it at 99 poles, course continued, in all 186 poles and 15 links, right angle left one pole, to the six chestnuts at (D); then from the six chestnuts I ran, reversing call of deed of R. D. Belcher to Wm. H. Witten, as claimed by the plaintiffs, N. 55° E., 2° variation, N. 57° E. at 21 poles, a chestnut oak line tree, from which I took a block, Exhibit No. 5; also passing four gums marked as line trees, all within 50 poles of the chestnuts. I did not find any more marks on this line; course continued, crossing a branch at 62 poles, the top of a
137 ridge at 80 poles, in all 98 poles, to Simmons creek or left-hand fork of same, at (W). I then, at the instance of plaintiffs, went to the spruce pine and white oak on the east fork of Simmons creek, at (R), and ran thence according to the calls given in deed from Chrispenas Belcher to Obediah Belcher, after calling for a double maple, spruce pine, & white oak, corner to said Miller; thence N. 40° W. 16 poles to a poplar and beach at figure (1), distance terminated in cleared land; thence S. 75° W. 59 poles *for* a chestnut, chestnut oak, and locust at (—), course and distance terminated in cleared land; offset right N. 3° 45′ W. 22 poles to a

chestnut oak and fallen chestnut on the ridge at (2), said chestnut oak plainly marked as a corner, from which I took a block, Exhibit No. 3; true course *course* of line from (1), where the poplar and beach are called for, is N. 84° 40′ W. 59 poles to the chestnut oak and chestnut at (2). I then ran N. 81° 15′ W. 76 poles to two spruce pines and white oak at (3); said corner described as on the middle fork of Simmons creek and corner to William Payne. From one of said pines I took a block made Exhibit No. 4. I have at the instance of the plaintiffs laid down upon the plat the boundaries of some adjacent tracts, some of the lines of which I have run and reported, and residue of boundary laid down according to description given in certified copies of deed from the records in the clerk's office of Mercer county, West Virginia, which are as follows, viz: A tract of 200 acres conveyed by Chrispianos Belcher to Obediah Belcher by deed dated February 13th, 1857, Deed Book No. 4, page 373; same conveyed by Obediah Belcher to Henry Sadler by deed dated October 25th, 1870, D. B. No. 7, page 37, which tract is represented on the accompanying plat by the letters and figures as follows: S, T, U, V, A, & figure 8; thence up the east fork of Simmons creek to S.

138 A tract of 300 acres conveyed by Chrispianos Belcher and wife to Mary E. Belcher by deed dated September 10th, 1873, the boundaries of which are represented by letters and figures as follows: By letters N, O, P, Q, R, S, & figures 8 & 9, and thence to (N.); also a tract described as containing (400) four hundred acres conveyed by Chrispianos Belcher and wife to Obediah Belcher by deed dated July 20th, 1844, the boundaries of which are represented by the following letters and figures, viz: N, O, P, Q, R, and figures 1, 2, 3, 10, 11, and thence down Flipping creek to N.

A tract of 150 acres conveyed by Chrispianos Belcher and wife to William Payne by deed dated July 17th, 1847, and conveyed by William Payne and wife to William H. Witten by deed dated April 6th, 1852, Deed Book No. 3, page 459, and which said tract is represented by the following figures, viz: 3, 10, 12, letter E to 3.

A tract of (1,100) eleven hundred acres conveyed by R. D. Belcher and Chrispianos Belcher and wives to William H. Witten by deed dated December 23rd, 1852, Deed Book No. 3, page 523, and which is represented by the following figures, viz: Figures 16, 17, letter (D), and to 16.

A tract of (100) one hundred acres conveyed by Chrispianos Belcher and — to Mary E. Belcher by deed dated September 18th, 1873; G. W. Belcher and Mary E. Belcher, his wife, conveyed 50 acres of same land to A. G. Belcher by deed dated August 11th, 1880, which is represented by the following letters and figures: D, E, 12, 13, and to D.

A tract containing (225) two hundred and twenty-five acres conveyed by Chrispianos Belcher — wife to Obediah Belcher by deed dated February 13th, 1857, represented by the following let-

139 ters and figures, viz: D, 13, 14, 17, and to D. Obediah Belcher to John Belcher, 167 acres, part of the above (225) acres, by deed dated March 14th, 1867; same was conveyed by A. C. Dickinson,

commissioner, to W. Scott Witten by deed dated April 25th, 1882, which said 167 acres *is* represented by the following figures and letters, viz: D, 17, 15, 18, 19, 20, and to D.

The lines running from the point at figure (23) on the line marked W. C. Nicholas line, thence N. 60° E., passing the double and single poplar at (C) and the two birches at (A) on Simmons creek and continued to the mouth of Spruce Pine branch on Flipping creek at (9), represented the division line between Robert D. Belcher and Obediah Belcher, and which is the north line of Robert D. Belcher's land so admitted by both parties.

It is also admitted by both parties that the line which I ran from the stake and stone pile at (B) N. 9° 30′ W. to the six chestnuts at (D), if reversed from the chestnuts to the point (B) and extended, would strike the mouth of Laurel creek, on Bluestone river, at figure (16) on the plat, the corner of the Wilson Cary Nicholas 500,000 acres as run by Philip Lybrook.

The line run from the two birches at (A) N. 50° 10′ W. 120 poles would terminate at (24) on the plat.

The plaintiffs claim that the land embraced in the deed of R. D. Belcher to Wm. H. Witten is represented by the following lines and letters, viz: Beginning at the two birches at (A), thence up Simmons creek to (F) at the forks of the creek, thence up the left-hand fork to (W), thence to the six chestnuts at (D), thence to the double and single poplar at (C), thence to (A), the place of beginning.

Plaintiffs farther claim that the land embraced in the deed of Chrispianos Belcher to G. W. Belcher is represented by the letters and figures as follows, viz: Beginning at the junction of the
140 middle and left-hand forks of Simmons creek at (F), thence up the left-hand fork to (W), thence to the six chestnuts at (D), thence to a spruce pine and white oak on the bank of the left-hand fork at (E), thence to the two spruce pines and white oak at (3), thence down the middle fork to its confluence with the left-hand fork at (F), containing (44¾) forty-four and three-fourths acres.

The defendants claim that the land embraced in the deed of R. D. Blecher to Wm. H. Witten is represented by lines and letters as follows, viz: Beginning at the two birches at (A), thence to the six chestnuts at (D), thence to the double and single poplar at (C), thence to the two birches at (A), containing (246) two hundred and forty-six acres.

The defendants farther claim that the land embraced in the deed from Chrispianos Belcher to G. W. Belcher is represented by the lines and letters as follows, viz: Beginning at the two birches at (A), thence to the six chestnuts at (D), thence to a spruce pine and white oak at (E), thence to two spruce pines and white oak on the middle fork at (3), thence down the middle fork to (F), thence down Simmons creek to (A), containing (179¼) one hundred and seventy-nine and one-fourth acres.

The land in controversy is shaded green upon the plat and represented by the following letters: A, M, L, K, J, I, F, W, D, and to A (134¾), containing one hundred and thirty-four and three-fourths acres.

All of which is respectfully reported March 24th, 1887.

A. P. SINNETT,
Surveyor for U. S. Dist. Court at Charleston, W. Va.

141 The costs of foregoing work are as follows:

To A. P. Sinnett, surveyor, Dr.

For bill as surveyor, including R. R. fare and expenses of travel and at Pocahontas		$163 30
By cash of J. H. Ferguson	$20 40	
" " " Col. Dodd	50 00	
" " of Edward J. Collins	92 90	
		163 30
Paid by Wm. Ingles for chainmen & expenses		24 95
		$188 25

A. P. SINNETT,
Surveyor for U. S. Dist. Court, Dist. of W. Va., at Charleston.

(Here follows diagram marked page 141.)

142 And at another day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston, in said district, on May the 24th, 1887, among the proceedings had was the following, to wit:

JOSEPH I. DORAN, Compl't,
vs.
THE SIMMONS CREEK COAL CO. & *als.*, Def'ts. } In Ch'y.

By consent of all the parties to this cause the same is submitted for final hearing at this term and to be argued by printed briefs, all of which briefs are to be filed on or before 1st September, 1887, each party to furnish his adversary with a copy of his brief, and a stipulation in writing, dated on this day, relative to an alleged lost deed from Chrispianos Belcher to Robert D. Belcher, is now filed in said cause.

The stipulation referred to in above order is in the words and figures following, to wit:

J. I. DORAN
vs.
THE SIMMONS CREEK COAL CO. *et al.* } In Chancery.

It is conceded by the defendants in this cause that if it be a fact, as testified to by Robert D. Belcher, a witness for the complainant, that the tract of land in controversy in this suit was conveyed to him by Chrispianos Belcher & wife, as stated in his deposition herein; that said deed never was recorded, and that diligent search therefor has been made, and that no such deed can be found; but the defendants still deny that any such deed was ever made; and

it is agreed that this paper be filed and read as evidence on behalf of the complainant at the hearing of this cause.

Dated May 24th, 1887.

WM. A. QUARRIER,
For Def'ts.
JAMES H. FERGUSON,
Att'y for Pl't'ff.

143 J. A. Jones, notary public, Charleston, W. Va.

The depositions filed in this cause are in the words and figures following, to wit:

The depositions of William H. Witten and others, taken before me, William B. Morton, a notary public in and for the county of Tazewell, in the State of Virginia, on the 30th day of March, 1886, at the store-house of the Southwest Virginia Improvement Company, at Pocahontas, in Tazewell county, Virginia, pursuant to notice filed herewith, to be read as evidence in behalf of the complainant in a certain suit in equity, depending in the district court of the United States in and for the district of West Virginia, sitting at Charleston, in said district, wherein Joseph I. Doran is complainant and the "Simmons Creek Coal Company" and others are defendants.

Present: S. D. May, attorney for complainant; A. W. Reynolds & T. L. Henritze, — Simmons Creek Coal Co.; I. A. Welch & George W. Belcher in person.

The taking of these depositions continued until to-morrow at — o'clock p. m.

WM. B. MORTON, *N. P.*

W. Scott Witten, a witness of lawful age, being first duly sworn, deposes and says:

Question 1. Please state your age.

Ans. 38 years old.

Ques. 2. Are you related to William H. Witten?

Ans. I am a son.

Ques. 3. Where did your father reside or live in the year 1852?

144 Ans. He lived where he now lives, in Abb's Valley.

Ques. 4. From whom did your father (William H. Witten) purchase the land upon which he now lives, and when?

Ans. He purchased it from his father, as well as I recollect. I think it — deeded or conveyed about the 23rd day of September, 1852. My understanding is he purchased it several years before.

Ques. 5. How far is this land from Laurel creek?

Ans. It comes to the mouth of Laurel creek.

(Exception.—The last two foregoing questions and answers are excepted to by the Simmons Creek Coal Co., by counsel, because irrelevant and immaterial.)

Ques. 6. Are you acquainted with the land in controversy in this suit?

Ans. I am.

Ques. 7. Did you ever own or claim any interest in said land; if so, from whom did you purchase same; how long did you own or claim to own said land?

(Excepted to by defendant as incompetent.)

Ans. I did. I purchased it 13th day of February, 1877, from David E. Johnston & John A. Douglass, com'rs Mercer circuit court, in the ch'y cause of The Bank of Princeton *vs.* Wm. H. Witten.

Ques. 8. From whom did your father purchase said land, and when, and what lands did he purchase?

Ans. He purchased from R. D. Belcher 200 acres lying on Simmons creek, in Mercer county, West Virginia. A copy of deed, marked A No. 1, is filed as a part of my deposition. He also purchased, I think, about 1,100 acres from R. D. Belcher and
145 Chrispianos Belcher. A copy of said conveyance is here filed as Exhibit R. D. B. & C. B. My father and R. C. Graham owned another tract of land, principally on the top of dividing ridge, running down on the waters of Simmons creek.

(Excepted to by defendant because the answer is incompetent and immaterial to any issue in this cause.)

(The foregoing answer is further excepted to by defendant for the reason that the exhibits herewith filed are improperly filed, and for other reasons.)

Ques. 9. Please state if either of said 3 tracts adjoin the said tract of land upon which your father lived in the year 1852.

(Excepted to by defendant because the question and any answer thereto *is* irrelevant and immaterial to any issue in the cause.

Ans. The 1,100-acre survey adjoined the Home tract, at the mouth of Laurel creek.

Ques. 10. Did or not the said 200-acre tract adjoin the said 1,100-acre tract?

(The foregoing question and any answer thereto are excepted to by defendant, by counsel, because they are irrelevant and immaterial.)

Ans. It did.

Ques. 11. What acts of ownership did your father exercise over said lands?

(The foregoing question is excepted to by defendant, by counsel, because it refers to other lands besides the land in controversy, and is incompetent.)

Ans. I don't know exactly what is considered ownership. There never was any dispute about his title until this suit come up
146 that ever I heard of. He paid taxes on it, and he never had any one living on said lands—*i. e.*, on the 200-acre tract.

He bought, I presume, for ranging cattle, for which purpose he used it.

Ques. —. Please state the boundary lines of said 200-acre tract as claimed by your father before and at the time you purchased same and the boundary lines thereof as claimed by you since your purchase.

(The foregoing question and any answer thereto are excepted to by defendant, by counsel, because the deed is the best evidence, and for other reasons.)

Ans. The metes & bounds can be found in the deed I made Joseph I. Doran.

(The foregoing answer is further excepted to by defendant, by counsel, so far as it refers to the witness's ownership of said land, because there is no competent evidence of such ownership and the deed he refers to from him (witness) to plaintiff is not produced.)

13 Question. Please state the east line of said 200-acre tract as claimed by you and as claimed by your father prior to your said purchase.

(Excepted to by defendant, by counsel, because the deed under which he claimed is the best evidence.)

Ans. Simmons creek is the east line.

Ques. 14. Please examine map now here shown you, marked property of "Joseph I. Doran" and others by old deeds, and state if the boundary of said 200-acre tract as claimed and purchased by you and as claimed by your father prior to your purchase is correctly laid down on said map; if so, state the boundary of
147 said 200-acre tract as shown by said map and file same as part of your deposition.

(The foregoing question and map referred to therein and any answer that may be given thereto are excepted to by defendant, by counsel, for the reasons that the map is not proper evidence, is calculated to mislead the witness because indefinite, and contains matter entirely foreign to the issue, and for other reasons patent on its face and to be assigned at bar.)

Ans. The boundary lines as shown on said map are correct as well as I remember, said land, the line of which begins on 2 birches on Simmons creek, running up said creek, and when I sold the land I did not know which fork of the creek to go up, and I run up the west fork to, I think, a spruce pine and white oak, and I run S. 50 or 55 west. I believe 120 p. is called for by the deed; the map calls for 106 p. I am not sure as to my own knowledge how many poles it is, and I herewith file this map as a part of my deposition. There is two lines I did not give, as follows, running from 6 chestnuts S. 10½ E. — poles; thence to the beginning.

By consent of parties the further taking of this deposition & others is continued until to-morrow.

WM. B. MORTON, *N. P.*

Pursuant to adjournment from yesterday, the further taking of the deposition of W. Scott Witten and others, *are* resumed April 1st, 1886.

WM. B. MORTON, *N. P.*

Ques. 15. Please state why it was you hesitated or did not know which fork of Simmons creek to run up when you were
148 surveying said lands, and also state why you run up the west fork of said creek.

Ans. I wanted to be certain that I did not run on any one else's land, and when I run up to the forks of the creek I was satisfied that I was not trespassing on any one—*i. e.*, by running up the west fork I commenced at the two birches and run up to the forks of the creek, and when I got there I run the west fork for fear I might trespass on some one else. From the forks of the creek up the west fork, I think, I run to a white oak & pine, this corner being the southwest corner of my father's and R. C. Graham-Payne place. I think, according to deeds to A. G. Belcher & father, it was 120 p. from said corner to 6 chestnuts. This line from white oak & pine corresponds with the deed. It was either S. 50 or 55 west to the 6 chestnuts.

Ques. 16. Was your ownership of said land ever questioned while you claimed to be the owner of said 200-acre tract of land?

(Excepted to by defendant, by counsel, because irrelevant and immaterial.)

Ans. Never, that I know of, and I never heard of it until this case come up.

Ques. 17. Did Chrispianos Belcher or any one else ever claim any part of said 200-acre tract while you owned and claimed same or after Robert D. Belcher conveyed same to your father, in the year 1852?

(The foregoing question is excepted to by defendant, by counsel, because the question is irrelevant. If relevant in any shape it should refer to the land in controversy and not the 200-acre
149 tract, which is not in controversy.)

Ans. Chrispianos Belcher never owned or claimed any of the 200-acre tract that I ever knew or heard of while I owned it. I never heard of any claim to any part of it until the 25th day of December, 1884.

Ques. 16. Please state what years, if any, you were in the actual possession of said 200-acre tract as claimed by you, and whether or not you paid the taxes thereon while so possessed and claiming to be the owner thereof.

Ans. It is owing in what sense of the word actual possession is. I kept cattle on the John Belcher place, and they ranged out on said 200-acre tract of land. The John Belcher place was purchased by me in April, 1877 or '8. I have been paying taxes on said 200-acre tract for my father for something near 15 years—*i. e.*, the last 15 years my father & myself owned said land.

(The foregoing answer is excepted to by defendant, by counsel, the whole thereof, because the material part thereof is not responsive to the question, but was brought out by questions propounded by plaintiff's counsel, which he refused to place upon the record and because the John Belcher place has nothing to do with this case.)

Ques. 17. Did not the said land bought by you of John Belcher adjoin said 200-acre tract of land, and did you live upon said John Belcher land or have any one living thereon claiming under you while you owned said 200-acre tract of land?

(The foregoing question and any answer that may be given thereto are excepted to by defendant because irrelevant.)

150 Ans. It did. I did have a tenant living there claiming under me.

Ques. 18. Did or not the tenant living upon the said John Belcher land look after and attend to the cattle you had ranged on said 200-acre tract of land?

Ans. He did. I kept them on the John Belcher place and the 200-acre tract also.

Ques. 18 by same. You have stated that you have been paying taxes on said 200-acre tract for about 15 years for your father. Did you or not attend to your father's business before you purchased said tract of land; and, if so, how long before?

Ans. I did; but I do not remember the No. of years, but will say for 4 or 5 years before I bought the said 200-acre tract of land.

Ques. 19 by same. What is the age of your father?

Ans. He was 75 years old the 11th day of January, 1886.

Ques. 20 by same. What is now his mental and physical condition?

Ans. He's right feeble; his mind and recollection is not very good at this time.

Ques. 21 by same. Has not your father's memory and mind been declining for the last 2 or 3 years?

Ans. Yes; I believe it has.

Ques. 22 by same. From the present mental and physical condition of your father is he able to recall business transactions with a certainty and accuracy?

Ans. I think not.

151 Ques. 23. How long has your father lived upon the tract of land conveyed him by his father in September, 1852?

(The foregoing question is excepted to by def't's counsel for the reason that the land referred to in the question is not the land in controversy in this suit.)

Ans. I was born where he now lives, and I suppose, from what I have heard him say, he has lived there 50 years.

Question. Did not your father have a tenant or tenants living upon the said 1,100-acre tract, adjoining his said Home place, and the said 200-acre tract for many years while he owned same, and did you not have tenants thereon whilst you owned said lands?

(The defendant, Simmons Creek Coal Co., by counsel, excepts to the foregoing question and any answer that may be given thereto because the tract of land referred to in the question is not the land in controversy or any part thereof and is a different tract from the tract of 200 acres of which the plaintiff claims the land in controversy is a part.)

Ans. My father had tenants living on the 1,100 — tract 1 or 2 years prior to selling James H. Perdue 148 acres of same, in 1877; it also adjoins the Home place and the 200-acre tract. I think there was a tenant living on that portion sold to James H. Perdue when he bought same, and also the tenants who attended to the John Belcher lands lived in the house on the 1,100-acre tract.

Ques. Did not your father have tenants upon the William Payne land, adjoining said 200-acre tract, for years?

(The defendant, by counsel, excepts to the foregoing question
152 and any answer thereto because they are irrelevant for same reasons assigned last exception above.)

Ans. He had no tenants on the William Payne lands since my recollection.

Ques. Did not the adjoining land-owners recognize the east and north lines of said 200-acre tract as claimed and conveyed by you and your father to complainant?

(The defendant, Simmons Creek Coal Co., excepts to the foregoing question and any answer thereto because they are irrelevant and immaterial and not binding on defendant.)

Ans. I never heard of any one claiming over our lines, and the east and north lines were recognized so far as I know.

Ques. Did not A. G. Belcher at one time own the land lying north of said 200-acre tract, and did he or not recognize the north line of said 200-acre tract as his line? If so, file any evidence you may have of such recognition of said A. G. Belcher, and state who conveyed said land to A. G. Belcher.

(The defendant, by counsel, excepts to the foregoing question and any answer thereto because they are irrelevant, and for other reasons.)

Ans. I helped to survey A. G. Belcher's land, and he was present and recognized that north line as the true line. The minerals of this land was conveyed by A. G. Belcher to Joseph I. Doran. If I remember, there was 5° difference in the callings of our deeds and A. G. Belcher's, and, as well as I recollect, we run the line by A. G. Belcher's papers. I hereby file an extract of deed from A. G. Bel-
153 cher to Joseph I. Doran as part of my deposition, marked A. G. B. A. G. Belcher's father deeded him a portion of this land. I think G. W. Belcher deeded him another portion of same. I don't know that I ever saw the deeds, but that was my understanding.

Ques. Was or not the northern portion of said 1,100-acre tract a part of a 1,500-acre tract conveyed by Obediah Belcher to said Chrispianos Belcher, and was not said 200-acre tract a part of said 1,500

acres and adjoining northern portion of said 1,100 acres; if so, why did Chrispianos Belcher join in conveying the 1,100 acres and not join in conveying the 200-acre tract, and are not said 2 deeds of same date, to wit, December 23rd, 1852?

(The defendant, by counsel, excepts to the foregoing question and any answer thereto because the same is entirely irrelevant to the issue in this cause and has nothing whatever to do with the land in controversy.)

Ans. According to what I know, the south line of the 200-acre survey was the division line of the 2,500 & 1,500 acre surveys, and also this line passed through the 1,100-acre survey; it was always my understanding that the 200-acre survey lay north of this division line. My understanding is the reason why he did not join in conveying the 200-acre survey was that he had before that conveyed it to R. D. Belcher. The 2 deeds are bearing date December 23rd, 1852.

Ques. 32. Did not Chrispianos Belcher own a tract of land from the year 1848 to 1856 which cornered on the said 2 birches on Simmons creek, and is not same known as the "Henry Walker
154 tract," and is not said land laid down on map filed with your deposition?

(Excepted to by defendant's counsel for reasons hereafter to be assigned.)

Ans. The Henry Walker tract of land cornered on the two birches, and Chrispianos Belcher, as well as I remember, conveyed that land to Henry Walker, and said land is laid down on map filed with my deposition. I don't know that Chrispianos Belcher owned said tract of land from 1848 to 1856.

Ques. What land or lands, if any, did William Miller or other Millers own or claim to own on Simmons creek or adjacent thereto at the time Robert D. Belcher conveyed to your father the said 200-acre tract of land?

(The foregoing question and any answer thereto are excepted to by defendant, by counsel, because the deeds are the best evidence and because irrelevant and immaterial to any issue in the cause.)

Ans. I don't know that William Miller or other Miller owned any land or lands at that time, but after that Wm. Miller claimed the land conveyed by G. W. Belcher and wife to A. G. Belcher. He never claimed any in my *knowing* adjoining this land except that.

Ques. Did not said Miller claim to own 600 acres of land east of Simmons creek and east of said 200-acre tract in the year 1852 and afterwards?

(The defendant, by counsel, excepts to the foregoing question and any answer that may be given thereto because it is leading & the deeds and records are the best evidence, and because the same is entirely immaterial and irrelevant and cannot affect defendant.)

155 Ans. I don't know that he did. I only heard that he owned 600 acres of land in there or in that country somewhere.

Ques. Did you every contract or offer to sell any part of said 200-acre tract—if so, when, to whom, and how much—or did any one ever try to buy said land or any part thereof? State the person, the date and quantity, and what part of said lands other than to complainant.

(The foregoing question and any answer thereto are excepted to by defendant, by counsel, because it is irrelevant and improper.)

Ans. Yes; I offered to sell before I did sell, about 1877 or 1878. I believe the first man I tried to sell to was Wm. A. Powell; then to Henry Sadler. I think I offered to Henry Sadler 200 acres adjoining him for one horse. Wm. Perdue wanted it, but think it was for Wm. A. Powell. I went with him once to look at it. I don't remember of offering it to any one else until I sold it to Joseph I. Doran.

Ques. Are you acquainted with the defendant, Geo. W. Belcher; if so, how long have you known him?

Ans. I have known Geo. W. Belcher all my life.

Ques. Have you had any conversation with the said defendant, Geo. W. Belcher, in regard to the land here in controversy? If so, give in full the conversation and when and where it occurred.

Ans. I had one conversation with Geo. W. Belcher in regard to this matter on the 25th day of December, 1884, at Rudisille's Hotel, in the town of Pocahontas, Va. I asked him what land it was he had sold (as Mr. Burkholder told me there was trouble about
156 the matter). He told me it was the land I sold Joseph I. Doran. I told Mr. Belcher he ought to be careful about trading on that land, and he remarked to me that when I sold it that I did not get much for it, and that if I would not kick in the thing that they would make me whole. This was all the conversation, as I remember.

(The foregoing question and answer *is* excepted to by defendant, Simmons Creek Coal Co., because it is irrelevant and improper and is no evidence against it.)

Quest. by same. How far has the defendant, Geo. W. Belcher, resided for a number of years past from the land here in controversy.

Ans. He lived east of that land; he lived upon the tract of land laid down on map which is part of my deposition, on which is marked Mary E. Barcroft; probably one mile or one mile and a half to his house from this land in controversy.

Ques. by same. What relation is the defendant, Geo. W. Belcher, to Chrispianos Belcher and Robert D. Belcher?

Ans. He is a brother of Chrispianos Belcher and a nephew of Rob't D. Belcher.

Ques. What relation is the defendant, Geo. W. Belcher, to Obediah Belcher, now dec'd.?

Ans. He is a son of Obediah Belcher.

Ques. Did not the defendant, Geo. W. Belcher, reside with his father, Obediah Belcher, before and at the time of his death?

Ans. I think he did.

157 Cross-examination by counsel for defendant, Simmons Creek Coal Co.:

Ques. No. 1. How old were you in the year 1852?

Ans. I was 4 years old.

Question No. 2 by same. Where were you on the 23rd day of December, 1852?

Ans. I do not know.

Question No. 3 by same. Did you see Chrispianos Belcher and Robert D. Belcher on the 23rd day of December, 1852?

Ans. Not that I remember.

Question No. 4 by same. You have sworn why Chrispianos Belcher did not join with Rob't D. Belcher in the deed conveying the said 200-acre tract to Wm. H. Witten on the 23rd day of December, 1852. How can you swear what was done by them on that day and why they did certain things when you were only four years old and don't know where you were and did not see the said parties?

Ans. It was always my understanding from my father and other parties the reason that Chrispianos did not join in deed with Rob't D. Belcher to Wm. H. Witten for the 200-acre survey was that he had conveyed it prior to that to Rob't D. Belcher.

Question No. 5 by same. Then you undertake to swear that what other people have told you is true, do you?

Ans. I have always believed truthful men's words.

Question No. 6. That is the reason that you swore to something you did not know, is it?

158 Ans. It has always been my understanding that Chrispianos Bylcher had conveyed the 200 acres to Rob't D. Belcher prior to the conveyance of same to my father by Rob't D. Belcher, but as to knowing it positively, I do not, not being present when the deeds were acknowledged.

Question No. 7 by same. Now, do you know of your own knowledge that such a deed was ever executed by Chrispianos Belcher to Robert D. Belcher?

Ans. I do not.

Question No. 8 by same. When did you see Chrispianos Belcher last, and when did he move away from this country?

Ans. I do not remember of ever seeing Chrispianos Belcher, and I do not know when he moved from this country.

Question No. 9 by same. How, then, do you undertake to swear what land he claimed and what he did not claim?

Ans. The papers show, I reckon, what he claimed and what he did not claim.

Question No. 10 by same. Then you undertake to swear from the papers that he did not claim any part of what you claim as the 200-acre tract, do you?

(Complainant, by counsel, excepts to this question and the preceding one because witness states in answer to question No. 15 that Chrispianos Belcher never owned or claimed any part of the 200-acre tract, that he ever knew or heard of while he owned it, and

never heard of any claim to any part of it until the 25th day
159 of December, 1884, and therefore the question of defendants assumes what the witness has not stated.)

Ans. He never claimed any that I knew of, him or any one else, until this suit come up.

Question No. 11 by same. Then you do not know, of your own knowledge, what he did claim, do you?

Ans. I do not know what he claimed.

Question No. 12 by same. You have undertaken to describe the lines of what you claim is the 200-acre tract and you have sworn that you run said 200-acre tract according to the deed from Robert D. Belcher to your father, and in answer to another question you said you ran one line, which you claim as a line of said tract, by A. G. Belcher's deed. When did you state the fact—the first time or the last?

Ans. Col. W. L. Graham and myself surveyed the land, and we surveyed according to the callings of the deed from Rob't D. Belcher to my father, and on the same surveying trip we surveyed A. G. Belcher's land.

Question No. 13 by same. What did you know about those lines before you made that survey?

Ans. I never surveyed before, but I knew the corners, having been at them several years ago.

Question No. 14 by same. How did you know the corners that were not named in said deed from Rob't D. Belcher to your father?

Ans. The corners that I knew are named in the deed.

160 Question No. 15 by same. The said 200-acre tract of land is all in the woods except what improvements have been made on it in the last year by the defendant, is it not?

Ans. It is all in the woods except what improvements has been put on by the defendant, and not inclosed.

Question No. 16 by same. The improvement that was on the 1,100-acre tract referred to was on the 148 acres which was conveyed to James H. Perdue about 1877 by you and your father, was it not?

Ans. A part of it was; 148-acre tract was not all the cleared land on the 1,100-acre survey.

Question No. 17 by same. Did not some one else claim the balance of the cleared land on said 1,100-acre tract adversely to you and your father, and have possession of same?

Ans. No person ever claimed any of that cleared land adversely to me and my father that I know of.

The further taking of the deposition of W. Scott Witten is continued till to-morrow morning between the same hour mentioned in the notice.

Present: The same parties as before.

Given under my hand April 1st, 1886.

WM. B. MORTON, *N. P.*

Pursuant to adjournment, the taking of the foregoing deposition is resumed April 2nd, 1886.

Question No. 18 by counsel for defendant, Simmons Creek Coal Co. When was the first time you ever went up Simmons creek by the land in controversy?

Ans. I do not remember exactly the first time. I remem-
161 ber of being on Simmons creek in the year 1877.

Question No. 19 by same. Then in the year 1877 is the first time you positively remember, is it?

Ans. That is the first time I positively remember of going there to see about corners & lines.

Question No. 20 by same. You have sworn that you were only four years old on the 23rd day of December, 1852, the date your father, Wm. H. Witten, received his conveyance of said 200-acre tract of land from Rob't D. Belcher; that you don't know where you were on that day, and that you never saw Chrispianos Belcher, and that you never was on the land in controversy to look for lines and corners till 1877, only nine years ago, yet you have sworn positively that you knew when you run the random lines up Simmons creek, an indefinite number of lines, to get from the two birches to the six chestnuts, where the deed only calls for one line, that you were not trespassing on any one else—something you could not possibly have known of your own knowledge. What excuse can you now give for such a rash statement on your solemn oath?

Ans. I run the lines according to the way I understand the callings of deed from R. D. Belcher to Wm. H. Witten.

Question No. 21 by same. Then all you know of your own knowledge is what the deed says, is it?

Ans. Yes; I run by the deed and corners.

Question No. 22nd by same. You say you have paid the
162 taxes on said 200-acre tract for a number of years. File your tax receipts as part of your deposition?

Ans. I have the tax tickets and will produce them as part of my deposition. I also file certificate from clerk of circuit court of Mercer county as part of my deposition, marked S. P. P.

Question No. 23 by same. The certificate of the clerk which you have filed shows the charge of the 200-acre tract of land referred to on the land books, does it?

Ans. I suppose it does, as we have never been charged with any other 200-acre tract of land on the com'r books on Simmons creek but this identical land.

Question No. 24 by same. You have referred to a purchase by you of the said 200-acre tract of land from Comm'rs Douglass & Johnston in a certain chancery cause of Bank of Princeton *vs.* Wm. H. Witten. You never had any deed from same, did you?

Ans. I never got any deed from them, and I never had any deed from any one. I had a decree from court, the sale being confirmed to me.

Question No. 25 by same. Who was present when you had the conversation you say you had with the defendant, Geo. W. Belcher, at Rudesill's Hotel, on the 25th day of December, 1884?

Ans. No one that I remember.

Question No. 26 by same. You never had any other conversation with Geo. W. Belcher about this matter, did you?

Ans. Not that I recollect of, except the one on that day.

163 Re-examination by complainant:

—. You have stated on cross-examination *that* the first time you ever went up Simmons creek to look after corners and lines. When was the first time you were ever on said creek for any other purpose?

Ans. I do not remember. My father used to take me out there when I was a little fellow, salting his cattle.

Ques. Please state what lands have been charged on the commissioner's books of Mercer county, West Virginia, since the said 200-acre tract conveyed to your father by Robert D. Belcher and wife was charged on said books. If you have any evidence thereof please file same with your deposition.

Ans. I hereby file as my answer certificate of clerk of Mercer county court, marked S. P. P. No. 2, showing what lands were charged on com'r's books from the year 1854 to the year 1879, and after that time showing no charge.

Ques. Has not the defendant, George W. Belcher, been present all the time during the taking of your deposition, and did he not hear you detail the conversation he had with you on December the 25th, 1884, at Rudisill House, in this place?

Ans. Yes; he was present, and I suppose he heard it.

(The defendant, by counsel, excepts to the last two foregoing questions and answers and the certificate of the clerk therewith filed as incompetent and irrelevant to this case.)

And further this deponent saith not.

W. SCOTT WITTEN.

164 HENRY SADLER, another witness of lawful age, being duly sworn, deposes and says:

Ques. 1st by complainant's att'y. What is your age, your occupation, and where do you reside?

Ans. I am 66 years old. My occupation is farming. I reside on Simmons ridge, in Mercer county, West Virginia.

Ques. 2 by same. How long have you resided on Simmons ridge, and are you the owner of the land where you reside; and, if so, from whom and when did you purchase your land?

(The defendant, by counsel, excepted to the question because his deed or deeds are the best evidence and because irrelevant to this case.)

Ans. I have resided there 20 years this spring. I am the owner of the lands where I reside, and I purchased same from Obediah Belcher in the latter part of 1865.

Quest. by same. How much land did you buy from Obediah Belcher, and how far is your land from the lands here in controversy?

Ans. I bought 204 acres from Obediah Belcher, adjoining the lands in controversy.

Ques. by same. When you purchased your land was it surveyed; and, if so, by whom and when and who was along when said survey was made?

Ans. It was surveyed by James Calfee in 1866, the spring I bought it—*i. e.*, one portion of it—and the other portion was surveyed afterwards, when I bought it. I do not remember whether it was
165 in the spring or fall of the year. I made the purchase myself. George W. Belcher, the defendant, and Wash. Hodge were present.

Ques. by same. At the time of your purchase from Obediah Belcher where and with whom did he live?

Ans. He lived above me, on the Mary E. Barcroft land, with his son, George W. Belcher.

Ques. by same. You state that George W. Belcher, the defendant, was along when a survey of your land was made. What was he along for, if you know, and what did he do or say, if anything, concerning the lines and boundaries of the land?

Ans. As well as I remember, he was marking the lines. I don't remember anything particular he said, except in running the line down the creek. There was something said that if we got too far from the creek we would get on Witten's land.

Ques. State when and where you were when you heard above remark and by whom it was made.

Ans. We were on the creek below Booth's mines, about half way between Booth's mines and Freeman and Jones' mines. As well as I remember, the remark was made my George W. Belcher.

Ques. How far were you from the two lynns called for in the deed from Obediah Belcher to you when said defendant, George W. Belcher, made said remark?

Ans. I don't recollect how far it was at all. It might have been 150 yards above the 2 lynns, the southwest corner of my land.

Ques. Did you or not understand at that time that defend-
166 ant, George W. Belcher, wanted the surveyor to run with Wm. H. Witten's lines down the creek?

(The defendant, by counsel, excepts to the foregoing question and any answer thereto because it is incompetent and leading.)

Ans. In running down the creek it was my understanding if we got too far over we would get on Wm. H. Witten's land. I did not understand anything about running with Witten's line down the creek.

Ques. Was Obediah Belcher present when lines of your land were run?

Ans. No, sir; he was not present with us.

Ques. Was or not George W. Belcher acting and attending to said surveying for (his father) Obediah Belcher?

(The defendant, by counsel, excepts to the foregoing question and any answer thereto because irrelevant and incompetent.)

Ans. He was.

Ques. Why was it that Calfee made a survey of *of* one portion of your said tract of land in the spring of the year 1866 and surveyed the other portion afterwards?

Ans. I did not buy it all at the same time. I bought 111 acres the first time and 93 acres the last time.

(The foregoing question and answer are excepted to by defendant's counsel because irrelevant and immaterial.)

Ques. Which parcel were you surveying when defendant, G. W. Belcher, remarked not to get too — from the creek, for fear of getting on Witten's land?

Ans. The first purchase.

Ques. How far up the creek does this tract of 111 acres run
167 from the 2 lynns?

Ans. I expect it is 200 yards.

Ques. Did you ever try to buy any land on Simmons creek from W. H. Witten and W. S. Witten or either of them, or did they or either of them ever try to sell you any lands? If so, state when, how much, and where situated.

(The defendant, by counsel, excepts to the foregoing question because it is irrelevant.)

Ans. W. Scott Witten tried to sell me 200 acres adjoining me about the year 1877. He offered me the 200 acres for a horse I had. It adjoins me on the west.

Ques. You have stated that you bought your land of Obediah Belcher. Did he convey it to you? If so, please file copy of your deed.

Ans. Yes, sir; I herewith file a copy of my deed from Obediah Belcher as part of my deposition, marked D. B. No. 7, page 36.

Ques. Did you ever have any conversation with defendant, George W. Belcher, after that time? If so, state when, where, and what he said.

Ans. I was speaking to George W. Belcher in regard to W. Scott Witten wanting to sell me this 200-acre tract of land. He made no reply in regard to the matter, in any way, that I remember.

Ques. Did the 200 acres said W. S. Witten tried to sell you in the year 1877 embrace any of the land in controversy in this suit?

(The defendant, by counsel, excepts to the foregoing question because it is irrelevant.)

Ans. Yes, sir; the 200 acres embraced the land in controversy, I think.

168 Ques. Was or not Simmons creek recognized by you as the line between your land and the land of said W. H. Witten?

(The foregoing question and any answer thereto are excepted to by counsel for defendant because it is incompetent.)

Ans. Yes, sir; it was.

(The whole of the deposition of Henry Sadler is excepted to by counsel for defendant because it is irrelevant and incompetent.)

Without waiving the benefit of the above exception, the following questions are propounded on cross-examination by counsel for defendant:

Question No. 1 by same. Mr. Sadler, from what you say, it has been about twenty years since you say you had the conversation with Geo. W. Belcher while you were surveying your land. Now, don't you think that you might be mistaken in your memory about that conversation?

Ans. No, sir; if I had been I would not have said anything about it.

Question No. 2 by same. You are a man of remarkably good memory, are you not?

Ans. Tolerably; I always have been. I never had any learning and had to keep things in my mind.

Question No. 3 by same. Can you give any conversation you had with any one yesterday?

Ans. I don't know as I could particularly.

Question No. 4 by same. Then you swear that you could not possibly be mistaken about a conversation that occurred twenty
169 years ago, yet you cannot remember any conversation you had with any one yesterday?

Ans. I can remember things that happened 20 years ago better than I can things that happen now.

Question No. 5 by same. Did you not have a falling-out with George W. Belcher once?

Ans. I do not know that I particularly did. We did have a little falling-out once in time, but I do not care anything for that.

Re-examined:

Ques. Is the George W. Belcher present at the taking of these depositions the same George W. Belcher with whom you had said conversation and a defendant in this suit?

Ans. Yes, sir.

And further this deponent saith not.

HENRY SADLER.

JOHN W. SPOTTS, a witness of lawful age, being duly sworn, deposes and says:

Ques. Please state if you are acquainted with the land in controversy in this suit.

Ans. I am.

Ques. Did you or not deliver or serve notice on James Branscombe & others, for and in the name of Joseph I. Doran, not to pay any rents to I. A. Welch and others claiming adversely to said Doran? If so, please file copy of such notice with your deposition.

Ans. I did, and I made affidavit before G. W. Belcher, J. P., on the 26th day of February, 1885, and said notice is herewith
170 filed as part of my deposition, marked J. B.

Ques. Did you or not deliver notice to Joseph Taylor and

others, for and in the name of said Doran, not to trespass upon said land? If so, file said notice with your deposition.

Ans. Yes, sir; I delivered such notice to Joseph Taylor (who is mentioned in said notice as Thomas Taylor) and Thomas O'Connor in person, and a notice to Michael O'Connor in registered package to Shamokin, Pennsylvania, and copy of said notice is *hereby* filed with my deposition, marked J. T.

Ques. Did or not the parties upon whom you delived said notices claim possession of said tenements and property under defendants at that time?

Ans. They did; under Mr. Welch and Mr. Bramwell, to whom they referred, in regard to their lease, to the best of my knowledge.

Ques. What improvements were made upon the land in controversy at the time you served said notices?

Ans. It could not have exceeded, I don't think, $200.00—*i. e.*, improvements by the defendants. Said improvements consisted of one ordinary frame building, and there might have been some log cabins higher up on the creeks, near the forks. I think there was log cabin; to my best belief none but some slight openings on the outcrop, as though there had been prospecting for coal.

Ques. Had not one Abel Massey lived in a house on said land in controversy, claiming under complainant, before the defendants or those claiming under them or their grantor were served with said notices?

171 Ans. Yes.

Cross-examination:

Question No. 1 by att'y for defendant. What house did said Massey live in?

Ans. I could not say whether he lived in the house or not, but I told him to take possession of a house that was under construction, situated upon the land presumed to have been purchased from W. H. and W. S. Witten, the tract of land now in controversy. Massey agreed to do so, and Joseph I. Doran executed a lease for the same on the 14th day of February, 1885.

Question No. 2 by same. Was not that the frame house which you refer to as having been constructed on the said land by defendants?

Ans. I can't say whether the defendant or some one else was constructing the house.

Question No. 3 by same. Was it not the same frame house you refer to in your examination-in-chief?

Ans. It is.

Question No. 4 by same. Did you not find said house closed up, and did you not either break it open or cause it to be broken open in order that you might put Massey in it?

Ans. I did not.

Question No. 5 by same. Were you present when said Massey entered the house, and who was there with you?

Ans. I was not present when Mr. Massey entered the house, and

I requested Mr. Massey to take possession of said house. I
172 was with him at the boarding-house occupied by —— ——,
south of said property, and told him to put a stone or some furniture in said property and to live in the same, and that any work he might do or have done upon said house to complete it and make it inhabitable and comfortable; I would see that he was paid and reimbursed for same and he would be credited upon his rent for it.

Question No. 6 by same. Did you not do this for the purpose of recovering or trying to recover the possession of said property from defendants or those under whom they claim?

Ans. I did to take possession, no one being in possession.

Question No. 7 by same. Do you mean to swear that neither the defendants nor those under whom they claim were in possession of the land in controversy at that time?

Ans. To my best knowledge and belief they were not. If they had have been I would have not taken the extreme care that I did to have put parties in said property to hold the same by possession for Joseph I. Doran.

Re-examined:

Ques. Did or not said Abel Massey put a stone and some furniture in said house, and did or not the defendants or their grantors or some one claiming under them break the lock on the door of said house and enter therein while said Massey was away?

Ans. It was so stated to me by Abel Massey, that he put a stone in said house, and a few days after putting stone in the house and
while the door was locked and he was absent for awhile, on
173 his return he found the lock broken, the door open, and said
house had been taken possession of by parties whom he said had been placed therein by a Mr. Reynolds, from Princeton, West Virginia, and that they would not deliver possession to him of the house, but also would not give him back his stone.

(The defendant, by counsel, excepts to the whole of the deposition of J. W. Spotts for the reason that same is irrelevant and immaterial, and for other reasons.)

And further this deponent saith not.

J. W. SPOTTS.

By consent of parties, by their attorneys, the further taking of depositions at Pocahontas, in Virginia, continued until the 22nd day of April, 1886.

Given under my hand this the 3rd day of April, 1886.

WM. B. MORTON, *N. P.*

By consent of parties, by their attorneys, the further taking of depositions in this cause at Pocahontas, Virginia, continued until the 28th day of April, 1886.

Given under my hand this 22nd day of April, 1886.

WM. B. MORTON, *N. P.*

The further taking of depositions continued and adjourned until to-morrow, April 28th, 1886.

WM. B. MORTON, *N. P.*

Pursuant to adjournment from yesterday, the taking of depositions resumed April 29th, 1886.

WM. B. MORTON, *N. P.*

Present: S. D. May, for complainant; A. W. Reynolds, for defendant; George W. Belcher, in person.

JAMES A. CROCKETT, a witness of lawful age, being first duly sworn, deposes and says:

174 Ques. 1st by att'y for complainant. What is your age and place of residence?

Ans. I am 53 years old; I reside in Mercer county, West Virginia.

Quest. 2 by same. Were you along when the Barcroft tract of land was surveyed for the Southwest Virginia Improvement Company, in or about October, 1882?

Ans. Yes; I was along.

Ques. 3 by same. Are you acquainted with the lands here in controversy? I mean do you know where it lies.

Ans. Yes, sir.

Ques. 4th by same. You have stated that you were along when the Barcroft tract of land was surveyed. Who else was along with you?

Ans. William Graham, Geo. W. Belcher, William Crockett were along.

Ques. 5th by same. You have stated that Geo. W. Belcher was along. Is he the same Geo. W. Belcher who is one of the defendants in the suit and now here present?

Ans. He is the same Geo. W. Belcher now present.

Ques. 6 by same. When you were surveying the Barcroft tract of land did you have any conversation with Geo. W. Belcher in relation to the lands here in controversy as to ownership of the land? If so, state what conversation you had.

Ans. We had a conversation about the lands in controversy. When we got down to the corner on the creek I asked Mr.
175 Belcher whose land that was adjoining the Barcroft land. He said Mr. Witten's.

Ques. 7 by same. Have you had any conversation with Geo. W. Belcher since he set up claim to the land here in controversy—how he happened to lay claim to it?

Ans. Yes, sir; I have had some conversation with Mr. Belcher about it. Mr. Belcher told me that he never knew he had any land there until Mr. Welch and Mr. Reynolds found it out, as I remember he said, by running the lines and plotting.

Ques. 8 by same. What Mr. Welch and Reynolds did Mr. Geo. W. Belcher refer to?

Ans. It was Newton Reynolds and Capt. Welch; I don't know his given name.

Cross-examination by att'y for defendant, Simmons Creek Coal Co.:

Question No. 1. You say you know the land in controversy. State what land is in controversy.

Ans. I don't know what you call it now. When we were surveying in there it was called the Witten land.

Ques. No. 2 by same. Then I understand you to say you don't know anything about the controversy in this suit?

Ans. I don't know anything about the suit.

Ques. No. 3 by same. It is very difficult to remember a conversation correctly when some time has passed since it occurred, is it not?

176 Ans. I remember what was said when — were running them lines.

Ques. No. 4 by same. You remember every word that was said then, do you?

Ans. I remember what I stated in the start.

Ques. No. 5 by same. How did you happen to remember that?

Ans. It seemed to be my business to get up the papers and to know these things, and when we come to anybody's land we did not know I would ask whose land it was.

Question No. 6 by same. You were particularly interested in remembering everything that occurred in the interest of the complainant, were you?

Ans. I was the first man that sold out to the Southwest Virginia Improvement Company, and was the first man they hired to aid in making surveys, and I selected my own surveyor. I was particularly interested in remembering everything in the interest of my employers.

Question No. 7 by same. The complainant claims the land in controversy for the Southwest Virginia Improvement Company, don't he?

(Objected to by att'y because the records of the county court of Mercer county show who is the owner of the land.)

Ans. As far as I know, the Southwest Virginia Improvement Company have claimed the land ever since it was surveyed.

Ques. No. 8 by same. All the Witten lands there are not in controversy, are they?

177 Ans. I don't know how many tracts Wittens have got.

Ques. No. 9 by same. You have been in the employ of the complainant or the Southwest Virginia Improvement Company, for which he holds a great deal, have you not?

Ans. I was with them a long time in getting up their lands.

Ques. No. 10 by same. You don't seem to know much about the Witten lands, do you?

Ans. I know something about the lands I helped to run.

Question No. 11 by same. Repeat all of the conversation you say you had with George W. Belcher, word for word. You say you remember it.

Ans. When we come to them corners I asked Mr. Belcher whose land that was, and he said Mr. Witten's.

Question No. 12 by same. Then that was all of the conversation?

Ans. It was all the conversation about the land at that time.

Question No. 13 by same. Did you not just now say that that was not all of the conversation?

Ans. I could not tell all that was said, but that was all the conversation about the land at that time.

Question No. 14 by same. You are mad at George W. Belcher and would like to see him lose this suit, would you not?

Ans. It is not so.

Question No. 15 by same. How does it happen, then, that you are so anxious to serve against him in this suit?

178 (Objected to by attorney for complainant.)

Ans. I told you that I had no knowledge of this thing until I was sent for yesterday evening, and I only want to swear the truth as near as I know.

Ques. No. 16 by same. Who did you first tell about what you knew and what you have stated?

Ans. Mr. Dodds was first talking to me about it.

Ques. No. 17 by same. How did he happen to talk to you about it?

Ans. I saw Mr. Dodds here and we were talking about the suit.

Question No. 18 by same. Then he came to you about it, did he?

Ans. No, sir; I met him and we were talking about the suit.

Ques. No. 19 by same. He spoke to you about it first, did he not?

Ans. No, sir; I don't know which spoke first.

Ques. No. 20 by same. Mr. Dodds was acting for the complainant, was he not?

Ans. I don't know as he were.

Ques. No. 21 by same. What interest had he in talking to you about this matter?

Ans. I don't know what interest he had. He might have had an interest for his employers.

Ques. No. 22. Who are his employers in this matter?

A. I suppose his employers is the Southwest Virginia Improvement Company.

Ques. No. 23 by same. Tell all of the conversation you had
179 with Mr. Dodds on that occasion.

(Excepted to by att'y for complainant.)

Ans. I could not tell at the present time what all was said about that thing.

Ques. No. 24 by same. What did Mr. Dodds or any of the other employees of the complainant say to you at any time about gaining this suit?

Ans. None of them ever said anything to me about gaining this suit.

Ques. No. 25 by same. Your recollection is remarkably good, is it not?

Ans. I think I know what I am talking about.

Ques. No. 26 by same. You are rather remarkable in your memory about the affairs of your neighbors, are you not?

Ans. I never had any trouble with my neighbors, but if I hear anything I recollect it.

Ques. No. 27 by same. You are a very kind man about giving advice to your neighbors about all of their troubles, are you not?

Ans. I have nothing to do with my neighbors' troubles unless I would be asked about it.

Ques. No. 28 by same. Now, Mr. Crockett, George W. Belcher has always been a man of good character for honesty, has he not?

(Excepted to by att'ys for complainant.)

Ans. So far as I know, he has. He has always been very kind to me.

180 Question No. 29 by same. When you had the last conversation you had with George W. Belcher, did he not tell you that he knew his brother, Chrispianos Belcher, had a tract of land on Simmons creek which he (George W. Belcher) afterwards bought and which is now in controversy, but that he did not know how the lines run till the gentlemen you have named surveyed the adjoining tracts?

Ans. There was something of this kind talked about after this conversation took place. He told me, I think, that Capt. Welch got him to write what he would take for his claim in there—*i. e.*, to Chrispianos Belcher, his brother.

Ques. No. 30 by same. What is your occupation?

Ans. A farmer.

Ques. No. 31 by same. How much of the Witten tract as claimed by the complainant is in controversy?

Ans. I don't recollect exactly how much they claim.

And further this deponent saith not.

JAS A. CROCKETT.

W. Scott Witten, being recalled, deposes and says:

Ques. 1 by complainant's attorney. You have stated heretofore that you would file certain tax tickets on said 200-acre tract on Simmons creek, claimed by complainant as paid by you for your father and yourself. Please file said tickets now with your deposition.

Ans. I herewith file copies of said tax tickets as part of
181 my deposition; said copies certified by Wm. B. Morton, N. P., in lieu of originals which have been produced and filed by consent of parties; said tickets for the following years, to wit, 1854, 1855, 1859, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1874, 1875, 1876, 1877, 1878, 1879, 1880.

Ques. 2 by same. What has become of tax tickets for the years 1856, 1857, 1858, 1860, 1861, 1862, 1863, 1864, 1865, and 1873?

Ans. In the year 1866 or 1867 my father had a trunk stolen with papers in it, and more than likely these tickets were in that trunk, and

I suppose the ticket for 1873 is somewhere about my father's house. I have searched for it and can't find it.

Ques. 3 by same. On the tax ticket for 1880 and others 2 tracts of land on Simmons creek, 200 acres and 500 acres, are mentioned. What tract of land is the 500 acres mentioned and the 200-acre tract also?

Ans. The 200-acre survey is the land in controversy; 500-acre survey is what had not been sold of the 1,100-acre survey. In 1873 we sold ⅔, undivided, of the 1,100-acre survey to D. E. Johnson, James D. Johnson, and John A. Douglass and, I think, H. W. Straley. The deed called for 1,100 acres, but in surveying it only made it 825 acres. In 1877 we sold James H. Perdue 148 acres of the 1,100-acre survey, on the northeast side of said survey. I kept a piece out of said survey myself—90 or 91 acres; then sold to Henry D. Belcher the surface of 150 acres, but he failed to pay for it, and afterwards
182 I sold ⅔, being my interest, to Joseph I. Doran, and the remainder of the survey was sold to Jordon Nelson in 1879. I reserved in all these tracts the coal and minerals, and afterwards sold the coal and minerals to Joseph I. Doran in 1881.

Ques. 4 by same. Please give the boundary lines of the tract of land you sold to Jordon Nelson or in which you sold the surface and the coals and minerals to complainant.

Ans. I commenced surveying at the mouth of Laurel and run what we suppose the Wilson Cary Nicholas line. We run our callings out on the head-waters of Elkhorn; then from there we run to the 6 chestnuts and back to the mouth of Laurel with the line known as the Lybrook line to the beginning. Said survey was bounded on the east by Robert D. Belcher's 200-acre tract conveyed to W. H. Witten, and also on the east by Henry D. Belcher, Felix S. Hill, Wiley Hill, Reubin Lovins, and, I think, James Bell; on the west by Perdue and others (the 148-acre tract sold to James H. Perdue does not touch any of the outside lines); on the north by Wm. B. Tabor and Henry Bell; on the south by the lands of Wm. H. Witten (Home tract) and my ⅔ cornering at the mouth of Laurel.

Ques. 5 by same. To whom has the 1,100 acre tract been charged on commissioner's books, Mercer county, since the year 1852?

Ans. I herewith file certified copy of the clerk of Mercer county court, showing to whom the said 1,100-acre tract has been
183 charged on the land books, marked S. P. P.; taxes on all land charged to my father paid, as far as I know.

Exception.—The foregoing deposition of W. Scott Witten is excepted to by counsel for Simmons Creek Coal Co. so far as it relates to the Wm. H. Witten Home tract and the eleven-hundred-acre tract, because it is irrelevant and immaterial to any issue in this cause.

And further this deponent saith not.

W. SCOTT WITTEN.

WILLIAM INGLES, a witness of lawful age, being duly sworn, deposes and says:

Ques. 1 by att'y for complainant. Please state where you reside and your occupation or profession.

Ans. I reside at Pocahontas, Virginia. I am a civil engineer by profession.

Ques. 2 by same. Please state if you are acquainted with the land in controversy in this suit.

Ans. I am.

Ques. 3 by same. How many acres does the tract in controversy contain?

Ans. About 140 acres.

Ques. 4. Are you acquainted with the tract of land conveyed to George W. Belcher by Chrispianos Belcher by deed bearing date October 18th, 1884, calling for 75 acres, more or less? If so, state the area thereof.

Ans. I know the land by the deed I have seen of that land. I know personally by having been over it. According to that
184 deed and by estimation made from said deed, assuming the middle fork of Simmons creek as a straight line, — makes, approximately, 176 acres.

Ques. 5 by same. What is the area of that portion of said tract of land lying in and above the forks of Simmons creek and not in controversy?

Ans. About 36 acres.

Ques. 6 by same. In the answer of defendant, Simmons Creek Coal Company, it states that if the line be run as a straight — from the 2 birches on Simmons creek to the 6 chestnuts George W. Belcher gets 75 acres, but if it be run as claimed by complainant in his bill said George W. Belcher gets only 15 acres, lying between the forks of Simmons creek. Is not said defendant mistaken and incorrect as to the area in both instances?

Ans. In the first place he gets 176 acres instead of 75 acres, and in the 2nd place about 36 acres instead of 15 acres.

Ques. 7 by same. What is the distance and the course or degree of a straight line from the 2 birches on Simmons creek to the six chestnuts?

Ans. The course is north 50° 10′ west 327½ poles. I ascertained this course and distance by survey, beginning at the two birches, running up Simmons creek, thence to the six chestnuts, and calculated the course and distance from the 6 chestnuts to the corner calling for the 2 birches by traverse.

Ques. 8. Please examine copy deed from Robert D. Belcher and wife to William H. Witten, of date December 23, 1852, here
185 handed you, and file same with your deposition, and under which complainant, as vendee of said William H. Witten and others, claims the land in controversy, and state if you know the beginning corner in said deed.

Ans. I know where there is one birch acknowledged to be the corner of the Witten tract or this tract in controversy—*i. e.*, the birch

on Simmons creek—and is an acknowledged corner of Chrispianos Belcher's land. Said deed filed herewith, marked "A No. 1."

Ques. 9 by same. Did not Chrispianos Belcher own a tract of land from the year 1848 to 1856 which cornered on the said two birches on Simmons creek, and is not same known as the Henry Walker tract, and is not said tract laid down on the map filed with the deposition of W. Scott Witten, marked property of Joseph I. Doran and others on Simmons creek, made from old deeds?

Ans. I have seen a deed from Chrispianos Belcher to Henry Walker conveying 640 acres of land that corners on the 2 birches, and said tract of land is laid down on said map. I saw two deeds—one from Robert D. Belcher to Chrispianos Belcher, executed in the year 1848, and one from Chrispianos Belcher to Henry Walker, dated April 12th, 1856, for the same tract of land. A copy of first-named deed filed herewith, marked "D. B. No. 3, pages 5 & 6."

Ques. Does not the said deed from Chrispianos Belcher to George W. Belcher call for the said 2 birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, and in running a straight — from said two points does not said course leave the creek at the *onset* and run west
186 of said creek all the way to said chestnuts?

Ans. It does call for two birches on the west bank of Simmons creek, corner to said Witten's land, and does diverge from the creek from the beginning and gets farther and farther from it as you go towards the 6 chestnuts, and it comes a little nearer the creek at the 6 chestnuts than it does at the middle—*i. e.*, on the west prong of the creek.

Ques. by same. Please state the distance from Simmons creek to the chestnuts on the curve or degree south 55 west, mentioned in said deed from Robert D. Belcher and wife to W. H. Witten.

Ans. I never measured it on the course S. 55 west; but running on a course S. 50 west, the distance by horizontal measurement is 100 poles and by surface measurement 106 poles. On a course 55 west, as called from the deed, would be a little further. The deed from Chrispianos Belcher to Geo. W. Belcher calls from the 6 chestnuts N. 50° east 112 poles to a branch of Simmons creek (white oak & 2 pines), a corner to Witten & Graham-Payne tract.

Ques. by same. Please state the distance from the said 6 chestnuts to the double and single poplars called for in said Witten deed and the distance from there to the two birches.

Ans. The distance called for in said deed is 310 poles; the actual distance, 334 poles; thence from the double and single poplars to the 2 birches on Simmons creek is 250 poles, actual distance is 256 poles.

187 Ques. by same. Did you or not prepare the said map filed with the deposition of W. Scott Witten, and does or not said map correctly show the land as claimed by complainant? And state if said map is accurately made.

Ans. I did prepare the map, and it shows accurately, according to my understanding, Belcher's, R. D., deed to W. H. Witten. All the plotting was made accurately, to the best of my ability.

Exception.—(The foregoing answer is excepted to by att'y for Simmons Creek Coal Co. because the witness gives his opinion, which is incompetent as evidence, and for other reasons to be assigned at bar.)

Ques. by same. Please examine copy of deed from said Robert D. Belcher and wife and Chrispianos Belcher and wife to said W. H. Witten, of date December 23, 1852, calling for 1,100 acres; file same with your deposition, and state if the degree of the north line of said tract, as given in said deed, is not of the same degree as the line called for in the deed from said Robert D. Belcher and wife to said W. H. Witten, of same date.

(Excepted to by att'y for Simmons Creek Coal Co. for the reason that the question and any answer thereto are irrelevant to any issue in the cause.)

Ans. The course to the north line in deed from Chrispianos Belcher & Robert D. Belcher & their wives to Wm. H. Witten, the course of the north line from a double birch to the 6 chestnuts is N. 55 E. 294 poles, is the same as the course reversed given in the deed from Rob't D. Belcher to Wm. H. Witten, running up Simmons
188 creek S. 55 W. to 6 chestnuts, 120 poles—*i. e.*, I mean the same degree.

Ques. by same. Reversing the calls of said deed from Rob't D. Belcher and wife to Wm. H. Witten or running from the two birches to the double and single poplars, thence to the 6 chestnuts, and thence N. 55 E. 120 poles to Simmons creek and down said creek to the beginning, embrace all the land claimed by complainant in this suit.

Ans. Yes.

Cross-examination:

Question No. 1 by att'y for Simmons Creek Coal Co. Do you mean to say that the two lines mentioned in your next to the last answer above in said two deeds are one and the same line?

Ans. In the north line of the first deed calls for 294 poles N. 55 E. from the double birch to the 6 chestnuts, and is the same course reversed, or S. 55 W. 120 poles, as mentioned in the deed from Rob't D. Belcher to Witten.

Question No. 2 by same. You don't mean to say, then, that they are one and the same line?

Ans. I mean to say this, that according to my best judgment I believe they were intended to be the same line, and with my knowledge of the country and the deeds in my possession I would consider them the same line and would so run them.

Question No. 3 by same. You have made a survey of the land embraced in said deed from Robert D. Belcher and Chrispianos Belcher and wives jointly to Witten, have you not?

189 Ans. I have.

Question No. 4 by same. How far is that tract from the nearest point away from the two birches mentioned as the corner of the tract in controversy?

Ans. It is about 220 poles.

Question No. 5 by same. Then that nearest point is on the line you have referred to in the said deed of Chrispianos Belcher & wife & Robert D. Belcher & wife for the 1,100 acres to Witten as being N. 55 E. 294 poles to the 6 chestnuts, is it not?

Ans. No, sir.

Question No. 6 by same. Then, if I understand you correctly, the line to which you refer as being N. 55 E. 294 poles to the six chestnuts is the north line of said 1,100-acre tract, and would first strike the said two-hundred-acre tract conveyed by Robert D. Belcher to Witten at the six chestnuts. Am I right?

Ans. Yes, sir.

Question No. 7 by same. Then to continue that line on from the six chestnuts as a line of the said two-hundred-acre tract without changing the course, it would never come to the said two birches, would it?

Ans. No, sir.

Question No. 8 by same. The double birch called for in the deed to Witten conveying the 1,100-acre tract is not the same corner
190 called two birches in the deed to the 200-acre tract, is it?

Ans. No, sir.

Question No. 9 by same. How many acres are there in the said 200-acre tract as claimed by complainant, exclusive of the land in controversy?

Ans. I estimate it at 217.

Question No. 10 by same. There is a branch of Simmons creek running into what you call the main Simmons creek, a short distance above the two birches, which is not laid down on complainant's map, is there not?

Ans. There is a branch near the two birches that runs nearly due east into Simmons creek, emptying into Simmons creek above the two birches.

Question No. 11 by same. Did you ever make a survey of that branch?

Ans. No, sir.

Question No. 12 by same. According to the survey you describe as embracing the land in controversy in your last answer in chief, there are more than four different lines or at least four different lines to embrace what the complainant claims as the land conveyed by Rob't D. Belcher to Witten in 1852, are there not?

Ans. Yes.

Question No. 13 by same. The land in controversy extends down in a narrow point to the two birches referred to, does it not?

Ans. Yes, sir.

191 Ques. No. 14 by same. Is the land in controversy worth as much as five thousand dollars at the present time?

(Excepted to by counsel for complainant.)

Ans. I don't suppose it could be bought for any less.

Question No. 15 by same. You made the surveys to which you have referred for complainant, did you not, and were in his employ?

Ans. No, sir; the complainant is Joseph I. Doran, and I am in the employ of the Southwest Virginia Improvement Company.

Question No. 16 by same. Why was the S. W. Va. Imp. Co. making this survey of this land?

Ans. I had instructions from Mr. Wickham, the president of said company, to make surveys of all the lands belonging to said company, and Joseph I. Doran's land lying in Mercer county, W. Va., for the purpose of making an accurate map and ascertaining the relative values of said lands.

Question No. 17 by same. Said company, through its employees, is managing this suit for Mr. Doran, is it not?

Ans. Mess. May, — are attorneys for the Southwest Virginia Improvement Company, are engaged in this suit for complainant.

Re-examination:

Q. Please state acreage or area of the tract of land conveyed by said Rob't D. Belcher and wife and Chrispianos Belcher and
192 wife to W. H. Witten by said deed of date December 23rd, 1852, calling for 110 acres.

(The foregoing question and any answer thereto are excepted to by att'y for Simmons Creek Coal Co. because irrelevant and immaterial to any issue in the cause.)

Ans. By a strict horizontal measurement, 778 acres.

Ques. by same. Did not said tract upon one survey made contain 756 acres?

(Excepted to by att'y for def't for same reason last above given.)

Ans. No survey that I know anything about.

Ques. If this tract only contained 778 acres, when the deed called for 1,100 acres, would it not indicate that the areas of the two tracts of land were estimated and supposed, not accurately platted and calculated?

(The foregoing question and any answer thereto are excepted to by att'y for defendant.)

Ans. It would indicate that it was supposed and estimated and not platted or accurately calculated.

Ques. by same. In running a straight line from the 2 birches to the six chestnuts would not said line cross the branch that runs nearly due east into Simmons creek, referred to in your cross-examination?

Ans. Yes; it crosses it very nearly at right angles—say 30 or 40 degrees, anyhow.

And further this deponent saith not.

WM. INGLES.

VIRGINIA, *Tazewell County,* } *To wit:*

I, Wm. B. Morton, a notary public in and for the county aforesaid, in the State of Virginia, do certify that the fore-
193 going and annexed depositions of W. Scott Witten, Henry

Sadler, John W. Spotts, James A. Crockett, and Wm. Ingles were duly taken, sworn to, and subscribed before me at the time and place mentioned in the caption and continuances.

Given under my hand and official seal this the 30th day of April, 1886.

[SEAL.] WM. B. MORTON, *N. P.*

Commissioner's fees	$35 00
Henry Sadler, 4 days' attendance & mileage	7 20
John W. Potts, 4 days' " " "	4 00
W. Scott Witten, 4 days' " " "	4 00
James A. Crockett, 1 days' " " "	2 00
	$52 20
Tax on notary's seal	1 00
Paid by complainant	$53 20

WM. B. MORTON, *N. P.*

The deed filed as Exhibit "A" No. 1 with W. Scott Witten's deposition is heretofore copied with bill & exhibits. (See page 15 of this record.)

(The exhibits filed with the deposition of W. Scott Witten are as follows, to wit:)

This indenture, made this 23rd day of December, 1852, between Robert D. Belcher and Rebecca, his wife, and Chrispianos Belcher and Rebecca, his wife, of the one part, and William H. Witten, of the other part, all parties of Mercer county, Virginia, witnesseth:

That, for and in consideration of the sum of thirty-five dollars in hand paid by the s'd William H. Witten, and in consideration thereof the said Belchers do*th* grant unto the said William H. Witten all, that tract of land containing by estimation eleven hundred acres, be the same more or less, lying in Mercer county, Virginia, on the waters of Bluestone and Elkhorn, and bounded as follows, to wit, viz: Beginning at the north of Laurel, a branch of Bluestone,
194 thence north 27 W. in the line of the Wilson Kery Nicholas 500,000-acre survey and with the same about 640 poles to 2 birches; thence continue on in said line 280 poles to a double birch on s'd line; thence, leaving said line, north 55 E. 294 poles to six chestnuts; thence south 35 east 940 poles to the beginning; and the s'd Belchers do*th* for themselves and their heirs hereby covenant and agree that they will warrant and defend a special title to the above-conveyed land.

Witnesseth the following signatures and seals.

ROBERT D. BELCHAR.

his
CHRISPIANOS x BELCHAR.
mark.

her
REBECCA x BELCHAR.
mark.

her
REBECCA x BELCHER. [SEAL.]
mark.

MERCER COUNTY, *To wit:*

This day Robert D. Belchar & Chrispianos Belchar, parties to the annexed deed, dated the 23rd day of December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be their act and deed, and directed me to certify their acknowledgment to the clerk of Mercer county court that the deed may be recorded.

Given under my hand this 7th day of May, 1853.

G. P. BROWN, *J. P.*

MERCER COUNTY, *To wit:*

This day Rebecca Belchar, wife of Robert D. Belchar, and Rebecca Belchar, wife of Chrispianos Belchar, and parties to the within deed bearing date the 23rd day of December, 1852, personally came
195 before us, as justices of the peace in said county, and, being examined by us privately and apart from their said husbands and having the deed explained to them, acknowledged the same to be their act and deed, and that *tha* had willing- signed it and *tha* did not wish to retract it, and directed us to certify their said acknowledgment to the clerk of Mercer county court that said deed may be recorded.

Given under our hands this the 7th day of May, 1853.

GEO. P. BROWN, *J. P.*
ELI BAILEY, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belcher and wife and Chrispianos Belcher and wife to William H. Witten, conveying land, with a certificate of acknowledgment and privy examination before two justices annexed, was this day presented in court — ordered to be recorded.

Teste: W. F. HEPTINSTALL, *D. C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 30th day of March, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 65 cts., ch'g'd to Joseph I. Doran.

(No. 2.) This deed, made this seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty-one (1881), between Andrew Green Belcher, of the county of
196 Mercer, State of West Virginia, and Martha Ann, his wife, parties of the first part, and John Graham, Jr., of Pearisburg, county of Giles and State of Virginia, party of the second part, and Joseph I. Doran, of the city of Philadelphia, in the State of Penn-

sylvania, party of the third part, — do grant unto the said party of the third part, his heirs and assigns, all the coal and other minerals within or underlying all that certain tract, piece, or parcel of land, composed of two contiguous tracts or pieces of land, situated at the head-waters of Simmons creek at the dividing ridge of Bluestone and Elkhorn, in the said county of Mercer, and containing eighty-five acres, more or less, bounded on the north by lands of Henry Swader, on the east and south by lands now or formerly of W. H. and W. S. Witten, and on the west by lands of Henry Bell; one of said tracts, containing thirty-five acres, more or less, being the same which John Belcher and Nancy, his wife, by deed dated June 21st, 1875, and recorded in Mercer county aforesaid in Deed Book No. 8, page 40, &c., granted and conveyed unto the said Andrew Green Belcher in fee, and the other tract, containing fifty acres, more or less, being the same which George W. Belcher and Mary E., his wife, in right of said Mary E. Belcher, by deed dated August 11, 1880, and intended to be forthwith recorded, granted and conveyed unto the said Andrew Green Belcher in fee.

Witness the following signatures and seals.

A. G. BELCHER. [SEAL.]

her
MARTHA ANN x BELCHER. [SEAL.]
mark.

JOHN GRAHAM, JR. [SEAL.]

197 Sealed and delivered in the presence of—
DAVID K. FURMANN.
WM. McGEORGE, JR.

STATE OF WEST VIRGINIA, }
County of Mercer, } *ss:*

I, James O'Keefe, a notary public for the said county of Mercer, in the State of West Virginia, do certify that Andrew Green Belcher and John Graham, Jr., whose names are signed to the writing above, bearing date on the seventeenth day of November, A. D. 1881, have acknowledged the same before me in my county aforesaid.

Given under my hand this seventeenth day of November, A. D. 1881.

JAMES O'KEEFE,
Notary Public.

STATE OF WEST VIRGINIA, }
County of Mercer, } *ss:*

I, James O'Keefe, a notary public for the said county of Mercer, in the State of West Virginia, do certify that Martha Ann Belcher, the wife of Andrew Green Belcher, whose names are signed to the within writing, bearing date the seventeenth day of November, A. D. 1881, personally appeared before me in the county aforesaid, and, being examined by me privily and apart from her husband and having the writing aforesaid fully explained to her, the said Martha Ann Belcher acknowledged the said writing to be her act, and de-

clared that she had willingly executed the same and does not wish to retract it.

Given under my hand this seventeenth day of November, A. D. 1881.

JAMES O'KEEFE,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

NOVEMBER 19, 1881.

This day the foregoing writing, together with the certificates thereon endorsed, was presented in said office and duly
198 admitted to record therein.

Teste: C. R. McNUTT, *Clerk.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is an extract from a deed on record in my office.

Given under my hand March 30, 1886.

SAM'L P. PEARIS, *Clerk.*

Deed Book No. 10, p'g's 74, '5, & '6.
Fee for extract, 75 cts., ch'g'd to Doran.

The tax tickets filed with the foregoing deposition of W. Scott Witten are in the words and figures following, to wit:

199 Mr. W. H. Witten to sheriff of Mercer county, Dr.

1854. To county levy	$11 03
" revenue	5 13
200, 1,100, 400 acres of land, 200—revenue	6 05
Road tax on same	6 05
	$28 26

Rec'd payment,

B. G. McNUTT,
Dep'ty S. M. Co.

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. William H. Witten to the sheriff of Mercer county, Dr.

1855. To county levy	$12 59½
" revenue	6 32
200, 400, 1,100, 200 — land—revenue	6 05
Road tax on same	6 05
	$31 01½

Rec'd payment,

B. G. McNUTT,
Dep'ty S. M. Co.

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

200 Wm. H. Witten to the sheriff of Mercer county, Dr.

1859.	Rev. on 200 acres of land, $2,200		8 80
	" " 400 " " 4,400		17 60
	" " 200 " " 50		20
	" " 1,100 " " 275		1 10
	Same with R. Graham, 200 acres	$1,250	88
	W. H. W. 313 "	365 $1,615	6 46
	242 "		
			$35 04

Rec'd payment,

JOHN A. PACK, *S. M. Co.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Wm. H. Witten to sheriff Mercer county, Dr.

1866.	Tax on $905 property		14 30
(1865.)	" " 845 "		13 72
	" " 8,215 land		67 36½
			95 38½

Rec'd payment,

B. WHITE, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

201 Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1867.	Capitation, $1.00; property, $11.00; tax	$12 55
	Land, 200 acres, $2,200; 400 acres, $4,400; 313 acres, $1,250; 242 acres, $365; total, $8,215	86 25
	Land, 200 acres, $100; 100 acres, $500	5 40
	Same & Graham, 150 acres, $250	2 25
	Total	$106 45

Rec'd payment,

B. WHITE, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Tax Ticket—1868.

Mr. Wm. H. Witten to the treasures of Rock township, Dr.

Land, 1,000 acres, $460, @ 90c. p'r $100—tax $4 14

Rec'd pay.,

THOMAS PRITCHARD.

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Tax Ticket—1869.

Mr. William H. Witten to the sheriff of Mercer county, Dr.

Capitation tax	$1 00	State tax	
Personal property	10 80	County tax, &c., &c., &c.	
Land, 200 acres	2,024		
" 400 "	4,048		
" 313 "	1,151 84		
" 242 "	333 96		
" 200 "	92 00		
" 800 "	368 00		
Same & Graham, 150 acres	201 37		
			$138 93½

Rec'd payment,

B. WHITE, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

202 Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1870:

Capitation tax		State tax	$1 61
Personal property		County tax	3 44½
Land, 200 acres	$92 00	Township tax	12
" 800 "	368	School tax	2 30
		Building tax	2 30
		Total	9 77½

Rec'd payment,

J. T. SMITH, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copay of the original.

WM. B. MORTON, *N. P.*

Mr. William H. Witten to the sheriff of Mercer county, Dr.

1871:			
Capitation tax		State tax	$1 61
Personal property		County tax	6 16
Land, 200 acres, 46 p'r acre	$92 00	Township tax	
		School tax	
Land, 800 acres, 46 p'r acre	368 00	Building tax	1 15
		Total	8 92

Rec'd payment,

J. S. CARR, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. William H. Witten to the sheriff of Mercer county, Dr.

1872:			
Capitation tax		State tax	$1 61
Personal property		County tax	4 24
Land, 200 acres	92 00	Township tax	
Land, 800 acres	368 00	School tax	2 30
		Building tax	
		Total	8 15

Rec'd payment,

J. S. CARR, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

203 Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1874:			
Capitation tax		State tax	$ 96
Personal property		County tax	2 83
Land, 200 acres, 46	$92 00	Township tax	
Land, 500 acres, 46	230 00	School tax	81
Land, 000 acres, —		Building tax	49
		Total	$5 09

Rec'd payment,

G. L. KARNES, *Dep'ty,*
For J. S. CARR, *S. M. Co.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. William H. Witten to the sheriff of Mercer county, Dr.

1875:			
Capitation tax		State tax	$1 43
Personal property		County tax	4 04
Land, 200 acres	$100	District tax	0 00
Land, 500 acres	375	School tax	1 43
Land, 000 acres	000	Building tax	72
			$7 62

Rec'd payment,

J. S. CARR, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1876:			
Capitation tax		State tax	$1 43
Personal property		County tax	4 48
Land, 200 —	$100	District tax	
Land, 500 —	375	School tax	1 43
Land, 000 —		Building —	1 90
		Total	9 24

Rec'd payment,

J. S. CARR, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

204 Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1877:			
Capitation tax		State tax	$1 43
Personal property		County tax	4 51
Land, 200 acres	$100	District "	
Land, 500 acres	375	School "	2 38
Land, 000 acres		Building tax	95
		Total	$9 27

Rec'd payment,

J. S. CARR, *Dep'ty,*
For G. L. KARNES, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. Wm. H. Witten to the sheriff of Mercer county, Dr.

1878:				
Capitation tax		State tax		$1 43
Personal property		County "		4 51
Land, 200 acres	$100	Township "		
Land, 500 acres	375	School "		2 38
Land, 000 acres		Building "		71
		Total		$9 03

Rec'd payment,

J. S. CARR, *Dep't.*,
For G. L. KARNES, *S. M. Co.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

Mr. W. H. Witten, in Rock district, to the sheriff of Mercer county, Dr.

	Local description.	Value.	Rate p'r $100.	
1879:				
Tax on 200 acres of land.	Simmons creek.	$100	30c. for State tax	1 43
			58 " county "	2 75
Tax on 500 acres of land.	Simmons creek.	375	50 " dis. school tax.	2 38
			10 " building "	48
Total value		475	Total tax	7 04

Rec'd pay.,

J. S. CARR, *Dep'ty*,
For G. L. KARNES, *S. M. C.*

I hereby certify that the foregoing tax ticket is a true copy of the original.

WM. B. MORTON, *N. P.*

204½ Mr. W. H. Witten, in Rock district, to the sheriff of Mercer county, Dr.

	Local description.	Value.	Rate p'r $100.	
1880:				
Tax on 200 acres of land.	Simmons creek.	$100	30c., State tax	1 43
			55c., county "	2 61
Tax on 500 acres of land.	Simmons creek.	375	35 dis. school T.	1 66
			20 for building	95
Total value		$475	Total tax	$6 65

Rec'd pay.,

J. S. CARR, *Dep't.*,
F'r G. L. KARNES, *S. M. C.*

A true certified copy of the original.

WM. B. MORTON, *N. P.*

205 WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, S'm'l P. Pearis, clerk of the county court of said county, do hereby certify that the following statement shows the charge of a 200-acre tract of land on the land books of said county in the name of Wm. H. Witten, or Wm. Witten as it sometimes appears, and its charge by transfer to Joseph I. Doran & Southwest Va. Imp. Co.:

Year.	No. acres.	Location of land.	In whose name charged.
1854	200 acres	Simmons creek f'k	Wm. H. Witten.
1855	" "	Land book destroyed	None.
1856	" "	Simmons creek f'k	Same.
1857	" "	Upper Simmons fork	Same.
1858	" "	Do.	Same.
1859	" "	Land book destroyed.	
1860	" "	Upper Simmons fork	Same.
1861	" "	Simmons fork	Same.
1862	" "	Do.	Same.
1863	" "	Do.	Same.
1864	" "	Land book gone.	
1865	" "	Simmons fork	Same.
1866	" "	Do.	Wm. Whitten.
1867	" "	Do.	Same.
1868	" "	Do.	Same.
1869	" "	Do.	Same.

Year.	No. acres.	Location of land.	In whose name charged.
1870	200 acres	Simmons fork	Wm. Whitten.
1871	" "	Do.	Wm. H. Witten.
1872	" "	Simmons fork	Wm. H. Witten.
1873	" "	Do.	Same.
1874	" "	Do.	Same.
1875	" "	Do.	Same.
1876	" "	Do.	Same.
1877	" "	Do.	Same.
1878	" "	Do.	Same.
1879	" "	Do.	Same.
1880	" "	Do.	Same.
1881	Does not appear on books for this year.		
1882	200 acres	Dividing ridge & Simmons c'k	Jos. I. Doran.
1883	" "	Same	Same.
1884	" "	Same	Southwest Va. Imp. Co.
1885	" "	Same	Same.

All of which is shown by the records of my office.
Given under my hand this 31st day of March, 1886.

SAM'L P. PEARIS,
Clerk Mercer County Court, West Va.

Fee for copy, search, &c., 1.66⅔, ch'g'd to Jos. I. Doran.

206 WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the following is a statement of all the lands charged upon the land books of said county to Chrispianos Belcher from and including the year 1854 to & including the year 1885, as shown by the records of my office:

Year.	No. acres.	Location of land.	In whose name charged.
1854	650 acres & 200 A.	Bluestone & Flipping ridge & Crane creek	Chrispianos Belcher.
1855	Books destroyed.		
1856	650 & 200 A.	Bluestone, Flipping ridge & Crane creek	Chrispianos Belcher.
1857	10, part of 650 A.	Bluestone	Chrispianos Belcher.
1858	10 acres	"	Same.
1859	Books destroyed.		
1860	10 acres	Bluestone	Same.
1861	Same	Same	Chrispi. A. Belcher.
1862	"	"	Same.
1863	"	"	Same.
1864		Books destroyed.	
1865	"	Bluestone	Same.
1866	"	"	Chrispi. Belcher.

Year.	No. acres.	Location of land.	In whose name charged.
1867	Same	Bluestone	Chrispi. Belcher.
1868	"	"	Chrispianos Belcher.
1869	"	"	Same.
1870	"	"	Same.
1871	10 acres	Bluestone	Chrispianos Belcher.
1872	" "	"	Same.
1873	" "	"	Same.
1874	" "	"	Same.
1875	" "	"	Same.
1876	" "	"	Same.
1877	" "	"	Same.
1878	" "	"	Same.
1879	" "	"	Same.
1880	No charge	"	
1881	No charge	"	
1882	No charge	"	
1883	No charge.		
1884	No charge.		
1885	No charge.		

Given under my hand this 31st day of March, 1886.

SAM'L P. PEARIS,
Clerk Mercer County Court, W. Va.

Fee for copy & search, 1.66⅔, ch'g'd to Jos. I. Doran.

(Exhibit filed with the deposition of Henry Sadler is in the words and figures following, to wit:)

207 This deed, made this October the 25th day, in the year 1870, between Obediah Belcher and Martha, his wife, of county of Mercer and State of West Virginia, parties of the first —, and Henry Sadler, of Mercer county and State of West Virginia, party of the second part, witness-: That, in consideration of the *some* of six hundred and twelve dollars paid in hand, the said Obediah Belcher and Martha, his wife, do grant unto the said Henry Sadler, with general warranty, a certain tract of land on Sim-ons creek, a branch of the waters of Bluestone, bounded as follows: Beginning *on* a spruce pine on the bank of east fork — Sim-ons creek at the mouth of a branch, thence N. 89 W. 34 poles to a maple and two small speckled oaks on a point near a fense, N. 82 W. 22 poles to chestnut oak, S. 75 W. 132 poles to a spruce pine and a birch on the bank of the middle fork of Simmons creek; thence S. 12 E and with meanderings of the creek down the same about 100 — to a buckeye and a beach on bank of said creek; continuing down the creek S. 10 E. and with meanders 46 poles, S. 20 E. 60 —, S. 32 E. 28 poles to two *lins* on the bank of the creek; thence, leaving the creek, N. 60 E. 126 poles, crossing the ridge, to the east fork of Simmons creek, to a buckeye, two beaches, and a maple; thencé up the creek N. 40 poles, N. 13000 poles, N. 3 E. 28 poles to a spruce pine on the creek; thence N. 11 W. 62 poles with meanders of creek to beginning; and that

the said parties of the first — will execute such further assurances of the said land as may be requisite.

Witness the following signatures.

his
OBEDIAH x BELCHER. [SEAL.]
mark.
her
MARTHA x BELCHER. [SEAL.]
mark.

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Wm. C. Honaker, a justice of said county, do certify
208 that Ob-diah Belcher, party to within deed, personally appeared before me and acknowledged the within to be his act and deed.

Given under my hand this 25th day of October, 1870.

WM. C. HONAKER, *J. P.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

I, Wm. C. Honaker, a justice of said county, do certify that Martha Belcher, whoes — is signed to the within deed, personally appeared before me, and, after being examined by me privily and apart from her husband, declared that she had willing- signed the same, and *and* acknowledged the within to be her act and deed — did not wish to retract it.

Given under my hand this the 25th day of October, 1870.

WM. C. HONAKER, *J. P.*

WEST VIRGINIA:

In the Recorder's Office of Mercer County.

SEPTEMBER 11TH, 1871.

A deed of bargain and sale from Obediah Belcher and wife to Henry Sadler, dated 25th October, 1870, conveying — acres of land situate on Simmons creek, with a certificate of acknowledgment and privy examination before a justice of said county, was this day produced in said office and admitted to record.

GEORGE EVANS, *R. M. C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 30th day of March, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 60c., ch'g'd to Doran.

209 (The exhibit filed with the deposition of J. W. Spotts is in the words and figures following, to wit:)

STATE OF WEST VIRGINIA, } *To wit:*
Mercer County, }

To James Branscombe, Sampson Smith, John Blade, William Booth & Co., and Joseph Taylor.

GENTLEMEN: I hereby give notice that the tenements located on the west bank of Simmons creek, near junction of west and middle forks of same and near and opposite coal works of Wm. Booth & Co., now occupied by you as tenants or subtenants, belong to me under deed of W. H. & W. S. Witten and Southwest Virginia Improvement Company, and not to Rorer, Reynolds, Welch, *et als.*, who, I understand, are unlawfully claiming same. I further give notice that all rents due to date under any lease heretofore entered into shall be paid to W. O. Davies, Pocahontas, Va., and that the monthly rent hereafter will be five dollars ($5.00) for each tenement, which amount you are hereby directed to pay to the said W. O. Davies, who is authorized as my agent to receipt for the same.

No payment made without my direction will be recognized, and action will be taken against you for the recovery of all rents due for the use of said tenements so long as they remain in your possession, unless I am promptly settled with as owner of same.

(Signed) JOSEPH I. DORAN,
Per A. J. & S. D. MAY, *Att'ys.*

Feb'y 24th, 1885.

(The following endorsement is found on the back of the foregoing notice:)

STATE OF WEST VIRGINIA, } *To wit:*
210 *Mercer Co.,* }

This day personally appeared before me, Geo. W. Belcher, a justice in and for the county and State aforesaid, J. W. Spotts, who made oath that he delivered a copy of this notice to each of the parties within named, to wit, James Branscombe, Sampson Smith, John Blade, Wm. Booth & Co., & Joseph Taylor.

Given under my hand this 26th day of February, 1885.

G. W. BELCHER, *J. P.*

(The notice "not to trespass," referred to in the deposition of John W. Spotts, is in the words and figures following, to wit:)

To Thomas Taylor, Michael Conner, and Thomas Conner.

GENTLEMEN: You are hereby notified not to trespass by digging or mining of coal, cutting of timber, or otherwise on the 382 acres of land situate on Simmons creek, in Mercer county, West Virginia, conveyed by William H. Witten and others by deed bearing date the fifth day of November, 1881, and of record in the clerk's office of the county court of said county in Book No. 10, pages 70, &c.

You are further notified not to pay any royalty on coal dug or

mined on said land or any rents, issues, and profits arising therefrom unto I. A. Welch, P. H. Rorer, N. L. Reynolds, A. W. Reynolds, C. W. Straley, or any other person or persons, or to the Simmons Creek Coal Company or any other corporation or corporations unlawfully claiming said lands.

That the undersigned will hold you responsible for all rents, issues, and profits of and for all damages done to said property, and for recovery of which action will be instituted against you unless settlement thereof is promptly made and possession of said property surrendered by you to the undersigned as owner of same.

211 JOSEPH I. DORAN,
By A. J. & S. D. MAY, *Attorneys.*

(The endorsement on the back of said notice is in the words and figures following, to wit:)

STATE OF VIRGINIA, *County of Tazewell,* } *To wit:*

This day John W. Spotts personally appeared before the undersigned, notary public in and for the county of Tazewell, in the State of Virginia, who made oath that on the 13th day of May, 1885, he delivered true copies of the foregoing notice to Joseph Taylor and Thomas O'Conner, on Simmons creek, in Mercer county, West Virginia, and on the 15th day of May, 1885, he mailed, per registered letter package, a true copy of said notice to Michael O'Conner, at Shamokin, in Northumberland county, State of Pennsylvania.

Given under my hand this the 1st day of April, anno Domini 1886.

WM. B. MORTON, *N. P.*

212 The exhibit referred to in the foregoing deposition of W. S. Witten, marked "S. P. P," is in the following words and figures, to wit:

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the following statement shows the charges of a tract of land deeded by Ro. D. & Chrispianos Belcher & their wives to Wm. H. Witten as 1,100 acres, from and including the year 1854 to the present time, as shown by the land books of my said county:

Year.	No. of acres ch'd.	Location of land.	In whose name charged.
1854--	1,100 acres--	Bluestone & Elkhorn---	Wm. H. Witten.
1855--	No land book this year.		
1856--	1,100 acres--	Bluestone & Elkhorn---	Same.
1857--	" " --	Flat Top----------	Same.
1858--	" " --	Do. ----------	Same.
1859--	No land book this year.		
1860--	1,100 acres--	Flat Top----------	Same.
1861--	" " --	Do. ----------	Same.

Year.	No. of acres ch'd.	Location of land.	In whose name charged.
1862--	1,100 acres--	Flat Top----------	Wm. H. Witten.
1863--	1,000 " --	Do. ----------	Same.
1864--	No land book this year.		
1865--	1,000 acres--	Flat Top----------	Same.
1866--	" " --	Do. ----------	Wm. Whitten.
1867--	" " --	Do. ----------	Same.
1868--	800 " --	Do. ----------	Same.
1869--	800 " --	Do.----------	Same.
1870--	800 " --	Flat Top----------	Wm. Whitten.
1871--	" " --	Do. ----------	Wm. H. Whitten.
1872--	" " --	Do. ----------	Same.
1873--	" " --	Do. ----------	Same.
1874--	500 " --	Do. ----------	Same.
1875--	" " --	Do. ----------	Same.
1876--	" " --	Do. ----------	Same.
1877--	" " --	Do. ----------	Same.
1878--	" " --	Do. ----------	Same.
1879--	" " --	Do. ----------	Same.
1880--	" " --	Do. ----------	Same.
1881--	702 " --	Simmons & Mill creeks--	Witten, Wm. H.; H. W. Straley, J. D. & D. E. Johnston, & John A. Douglass.
1882--	702 " --	Same ----------	Same.
1883--	702 " --	" ----------	Same.
1884--	816 " --	Same ----------	Witten, Wm. H., & H. W. Straley.
	And $\frac{5}{8}$ of the minerals under same ch'g'd to Southwest Va. Imp. Co.		
1885--	816 acres---	Simmons & Mill creeks--	Witten, Wm. H., & H. W. Straley.
213	The remaining $\frac{3}{8}$ minerals ch'g'd to Bluestone Coal Co.		

All of which is shown by the records of my office.
Given under my hand this 31st day of March, 1886.

SAM'L P. PEARIS,
Clerk Mercer County Court, W. Va.

Fee for copy & schs., $1.66\frac{2}{3}$, ch'g'd Jos. I. Doran.

(Exhibit called for & filed with deposition of Wm. Ingles, marked "A No. 1," has been heretofore copied & will be found on page 15 of this record.)

214 (Exhibit D. B. No. 5 & 6, filed with the deposition of Wm. Ingle, is in the words and figures following, to wit:)

This indenture, made this — day of ——, in the year of our Lord one thousand eight hundred and forty-eight, between Robert Belcher and Rebecca, his wife, of Mercer county, Virginia, of the one part, and Chrispianos Belcher, — the other part, witnesseth:

That the — Robert Belcher and Rebecca, his wife, for and in consideration of the sum of one hundred dollars to them in hand paid by s'd Chrispianos Belcher at or before the ense-ling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents do grant, bargain, & sell, unto the said Crispianos Belcher, his heirs and assigns, a certain tract or parcel of land lying on the ridge between Simmons & Flipping creeks, Mercer county, Virginia, it being a part of a tract of land de-ded to said Belcher by James Hector, containing six hundred and *and* forty acres, more or less, and bounded as follows, to wit: Beginning at the mouth of the Spruce Pine branch, on Flipping creek, *on* a spruce pine, maple, and buckeye, thence S. 30 W. 84 poles to 2 buckeyes, S. 52 poles to ches-nut, hickery, and a chestnut oak, S. 45 W. 94 poles to a chestnut oak and 2 hickor*ys*, S. 70 W. 68 poles to 2 white oaks and poplar by a path, S. 80 W. 32 poles to a gum and white oak, S. 30 W. 200 poles down the *dee* branch to Simmons creek, and up s'd creek to the forks, and up the left-hand fork to 2 *b*urch trees*e* on the dividing line between Obediah Belcher and Robert, and up the same to Flipping creek, and down*e* said creek to the beginning, with all and singular the advantages and appert*a*nances whatsoever to the said tract of land belonging or appertaining to the only proper use and behoof of him, the said Chrispianos Belcher, heirs or assigns forever; to
215 have and to hold the said tract of land, with the tenements, hereditaments, all and singular the premises hereinbefore mentioned or intended to be bargained or sold, and every part and parcel thereof, with every of his rights, members, and appertenances, unto the said Chrispianos Belcher, his heirs and assigns forever; and the said Robert Belcher and Rebeckey, his wife, for themselves and their heirs, the said tract of land, with all and singular the premises and appertenances before mentioned, unto the said Chrispianos Belcher and his heirs and assigns free from the claim or claims of them, the said Robert Belcher and Rebeckey, his wife, their heirs, and of all and every person or persons whatsoever, shall, will, and do warrant and forever defend by these presents.

In witness whereof the said Robert Belcher and Rebeckey, his wife, have hereunto set their hands and seals on the day and year first above written.

ROBERT BELCHER. [SEAL.]
REBECCA BELCHER. [SEAL.]

VIRGINIA, *Mercer County,* } *To wit:*

We, Hugh Holdson & Thos. G. Witten, justices of the peace in county of Mercer aforesaid, do hereby cert*a*fy that Robert Belcher, a party to a certain deed bearing date the 27th of February, 1849, and hereunto —, personally appeared before us, in our county aforesaid, & desired us to certify the said acknowledgment to the clerk of the county court of Mercer, in order that said deed may be recorded.

Given under our hands and seals this 27th day of February, 1849.

HUGH HOLSTINE. [SEAL.]
THOS. G. WITTEN. [SEAL.]

216 VIRGINIA, }
Mercer County. }

We, Hugh Holdson and Thos. G. Witten, justices of the peace for the county aforesaid, in the State of Virginia, do hereby certify — Rebecca Belcher, wife of Robert Belcher, parties to a certain deed bearing date 27th February, 1849, and hereunto annexed, personally appeared before us, in our county aforesaid, and, being examined by us privily and apart from her husband and having the deed fully explained to her, she, the — Rebecca Belcher, acknowledged the same to be her act and deed, and declared she had willingly signed, sealed, and delivered the same, & that she wished not to retract it.

Given under our hands and seals this 27th of February, 1849.

HUGH HOLSTINE. [SEAL.]
THOS. G. WITTEN, *J. P.* [SEAL.]

At Mercer County Court. May Term, 1849.

An indenture of bargain & sale from Robert Belcher and wife to Chrispianos Belcher, with a certificate of acknowledgment & privy examination before two justices annexed, was presented in court — ordered to be recorded.

Teste: C. W. CALFEE, *Clerk.*

WEST VIRGINIA, }
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do certify that the foregoing writing is a true & correct copy from the records in my office.

Given under my hand this 8th day of April, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee, $1.00, ch'd to Jos. I. Doran. Book 3, pgs. 5 & 6.

217–219 The notice, &c., & deposition of Robert D. Belcher in the foregoing case, filed May the 2nd, 1887, is in the following words and figures *following*, to wit:

In the District Court of the United States in and for the District of West Virginia, Sitting at Charleston, in said District.

JOSEPH I. DORAN }
vs. } In Chancery.
THE SIMMONS CREEK COAL COMPANY and Others. }

The defendants, The Simmons Creek Coal Company and others, in the above-entitled cause will take notice that on Saturday, the 30th day of April, 1887, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the house of M. J. Hopkins, in the county of Boone, in the district aforesaid, I will take the deposition of Robert D. Belcher, to be read as evidence in my behalf at the hearing of the above-entitled cause, wherein I am plaintiff and you, the said Simmons Creek Coal Company and others, are defendants, now pending

in the above-named district court of the United States, sitting with circuit court powers at Charleston, in the district aforesaid; and if, from any cause, the taking of said deposition is not commenced on that day, or, if commenced, is not completed on that day, I
220 will continue the taking thereof from day to day at the place and between the hours aforesaid until it is completed.

Dated this 22nd day of April, 1887.

JOSEPH I. DORAN,
By Counsel.

UNITED STATES OF AMERICA, }
District of West Virginia, } *ss:*

Joseph E. Chilton makes oath and says that he served a copy of the within notice upon Wm. A. Quarrier, Esqr., counsel for defendants, The Simmons Creek Coal Company, by delivering the same to H. D. Shrewsberry at the office of said Quarrier, at Charleston, in said district, on the 23rd day of April, 1887.

J. E. CHILTON.

Taken, sworn to, and subscribed before me in the district aforesaid this 30th day of April, 1887.

JOSEPH RUFFNER,
Com'r U. S. Dist. C't, D. W. Va.

The deposition of Robert D. Belcher, taken before the undersigned authority at the house of M. J. Hopkins, in the county of Boone, in the district aforesaid, on the 30th day of April, 1886, between the hours of 8 o'clock a. m. and 8 o'clock p. m., pursuant to the annexed notice, which deposition is to be read in behalf of the complainant in a certain suit in equity depending in the district court of the United States for the district of West Virginia, in which Joseph I. Doran is complainant and The Simmons Creek Coal Company and others are defendants.

Present: J. E. Chilton, Esqr., counsel for complainant.

The witness, ROBERT D. BELCHER, a witness of lawful age, being by me first duly sworn to testify the truth, the whole truth,
221 and nothing but the truth, deposes as follows:

1st. Quest. by compl't's counsel. State your age, residence, and occupation?

Ans. I am 65 years of age; reside in Boone county, West Virginia; am a farmer.

2 Q. by same. I show you a deed dated Dec'r 23, 1852, signed by Robert D. Belcher & Rebecca Belcher, his wife, to Wm. H. Witten, which is marked "Exhibit A," with this deposition. Please state if you made that deed.

Ans. I did.

3 Q. by same. Please state if you owned the land conveyed by that deed at that time; and, if so, from whom you got it.

Ans. I did own it. I got it from Chrispianos Belcher.

4 Q. by same. Did Chrispianos Belcher make you a deed for it?

Ans. He did.

5 Q. by same. State all you may know about Chrispianos Belcher's deed to you and what became of it.

Ans. He made a deed to me at the same time and at the same day and before the same magistrate before whom this deed is acknowledged. It got misplaced, and I never recorded it. I found the deed afterwards in my brother Obediah Belcher's papers. Witten asked me at the time I found it (he and I were looking over the papers), "What is the reason you never recorded this deed?" I told him that I had got it misplaced and had forgotten about
222 it. In going home from the justice's where I had acknowledged the deed it commenced raining, and I left it at my brother Obediah's for fear I would get it wet and spoil it, and that is how it came there among his papers.

6 Q. by same. Please state if you recollect the calls in the deed from Chrispianos Belcher to yourself referred to.

Ans. Well, as well as I recollect, it called for running from two or three birches on Simmons creek, running up the creek, the deed says, to six chestnuts.

7 Q. by same. Did you convey the same land to Wm. H. Witten and by the same calls that Chrispianos Belcher conveyed to you?

Ans. Just exactly. The deeds were read at the same time; they were both wrote by the same man; Witten wrote them both. The calls in the deed from me to Witten were copied from the deed to Chrispianos Belcher to me and all acknowledged by the same justice at the same time.

8 Q. by same. Did you understand in making the deed to Wm. H. Witten and did you understand when Chrispianos conveyed to you that you went up Simmons creek with Miller's line to a point, and then went south 55 west 120 poles to the six chestnuts?

Ans. No. I just understood that I went up Simmons creek, cornering on six chestnuts.

9 Q. Where was the Miller line?

Ans. I ain't able to tell exactly where, but my understanding was that it was running up that creek. The deeds calls it, don't it? My understanding was that it run up the creek; the deed calls for it. I don't understand nothing about it. I am going by
223 that deed.

10 Q. If you would run from the three birches to the six chestnuts a straight line would it not leave a tract of land there still owned by Chrispianos Belcher?

Ans. If it ever left any there owned by him I never knew it. I don't recollect it. My contract was that I was to have his land there, on that side of that creek, on the left-hand side of that fork.

11 Q. by same. Did you endeavor in your deed to convey Witten all the land you owned up to the Miller line, and did you think until recently that you claimed any land there or owned any?

Ans. Yes; I thought that he got a deed for it, as the deed was made to me; that was the understanding. I did not think until recently that I claimed any land there or owned any.

12 Q. by same. Did Chrispianos Belcher claim or own any land there after he sold to you?

Ans. If he did I don't recollect it or know it.

13 Q. I see on your deed to Wm. H. Witten as follows: "Beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up said creek with Miller's line." Where would this call go, if you are acquainted with it and can answer?

Ans. Of course it would go up the creek. The deed calls there.

14 Q. by same. Did you understand when you got the deed that it went up the creek?

224 Ans. Well, of course I must have understood it. The deed from me to Witten calls for it, and the deed from *to* Chrispianos to me is just like it. Witten wrote them both.

15 Q. by same. The next call is south 55 west 120 poles to six chestnuts. Was that line surveyed?

Ans. No; it never was surveyed. It was supposed.

16 Q. by same. What was your understanding in making this deed, about this last call?

Ans. My understanding was that it ran from the birches up Simmons creek to six chestnuts; that's what the deed calls. Of course I can't go from it. I bought all the land of Chrispianos Belcher to the Miller line, and that was the land that I did convey to Witten.

17 Q. by same. Please state where the Miller line was.

Ans. I suppose agreeably to the calls of that deed; it was up that creek; that line calls for it.

18 Q. by same. Was it your understanding that your deed run a straight line from the birches to the six chestnuts?

Ans. I can't tell you what my understanding was now about it. It has been a long time ago.

19 Q. by same. Under your deed from Chrispianos Belcher did you claim to the Miller line and up Simmons creek?

Ans. Yes; I did. That was the calls of the deed, and I claimed to the calls of the deed.

225 20 Q. Suppose a straight line from the birches to the six chestnuts would leave out a tract of land between the Miller line and the line made by the straight line referred to, do you still own that land between those two lines?

Ans. I don't know that there is any between them. If there is any land between them—if there are any two lines about it—I don't know it. If there is no corner between the birches and the chestnuts the lines run up Simmons creek according to the calls of that deed, and if it does run up the creek there is bound to be a corner on the creek.

21 Q. Do you recollect whether in Chrispianos Belcher's deed to you and in your deed to Witten that the line of the land deeded to you by Chrispianos and by you to Witten runs up the creek to a corner and thence south 55 west 120 poles to the six chestnuts, or in a straight line from the birches to the chestnuts?

Ans. I don't recollect of no corner being made on the creek.

22 Q. Do you recollect it run a straight line from the birches to the chestnuts?

Ans. No; I can't say that.

23 Q. Please state how you came to own this land and all that you know or recollect about it.

Ans. I bought from the two or three birches; I forget which—two, I believe. My recollection is that about the year 1842 my brother Obediah and myself purchased of James Hector 4,000 acres of land
situate on the waters of Bluestone, in the county of Mercer,
226 State of Virginia. We agreed upon a division line, Obediah taking about 2,500 acres and I about 1,500 acres, as we supposed the amount to be.

We had James Hector survey said lands according to the agreed division; said land being a part of a 400,000-acre survey granted by the Commonwealth to Wilson, Cary, and Nicholas, from whom said Hector purchased the same. Obediah Belcher sold 1,500 acres, part of said 2,500 acres, to Chrispianos Belcher, and in the year 1844, or about that time, I purchased of Chrispianos Belcher about 800 acres of the 1,500-acre tract in consideration of one horse, which I delivered to him. Said 100 acres — then bounded on the east by Simmons creek, a tributary of said Bluestone; on the north by the lands of Obediah Belcher and others; on the west by the line of the said Wilson, Cary, and Nicholas survey, and on the south by the said 1,500 acres conveyed to me by James Hector as aforesaid.

Some time after I purchased said 800 acres of land Chrispianos Belcher and myself were informed that there was a controversy or dispute about the west line of said Nicholas survey; that the line did not run as far west as James Hector claimed and conveyed to Obediah Belcher and myself; that one Philip Lybrook, a surveyor in Giles county, had some years before run the said line and located the same as running from the little fork of Elkhorn to the sugar tree corner on the top of the turkey knob, thence running to or
near by six chestnuts to the mouth of Laurel creek.
227 The line as run by the said Lybrook left out about ¾ of said 800 acres and about 500 acres of my said 1,500-acre tract, while said ¾ & 500 acres some parties claimed was vacant land and subject to survey for grant & patent. When Chrispianos heard of this dispute about the line he declined to make me a general warranty deed to that part of the 800 acres in dispute, and, not having his title bond for said land, I agreed to accept a general warranty deed for that portion not in dispute, and we agreed to wait to learn what would be done with the disputed part or where said line would be established or located. Chrispianos Belcher thereupon made and delivered me a deed, with covenants of general warranty, for the undisputed part. This, I think, was in 1852. At the same date I made the deed to Witten. This land was supposed to contain 200 acres, more or less. The metes and bounds of the same were as follows: "Beginning at two birches on Simmons creek, thence up said creek with the same and leaving said creek upon the course south 55 west 120 poles to six chestnuts mentioned, and thence with the said Lybrook line to a single and double poplar on the said division line between Obediah Belcher & myself, and thence with same to the beginning."

In the same year, 1852, I sold the said 200 acres of land and all the land the title to which had been called in question, supposed to to be about 1,100 acres, and, as Chrispianos Belcher had not conveyed his part of said 1,100 acres to me, I joined him in conveying the same to Whitton, and on the same day I conveyed to said Whitten said 200 acres, or by the deed to him intended to do so,
228 which Chrispianos Belcher had conveyed to me. Some time after making the conveyance to Whitten he and I were looking over some old land papers of Obediah Belcher's and myself at the house of Obediah Belcher and we came across the deed from Chrispianos Belcher to me for the said 200 acres of land.

Whitton said to me, "I thought you had that deed recorded." I then gave him the deed and money to have the same recorded, and have not since seen it. When I conveyed the said 200 acres of land to Whitten, Miller owned or claimed to be the owner of a tract of land lying east of and adjoining said 200 acres. The said line of said tract, believed and known then as Miller's land, run up Simmons creek from the two birches called for in my deed to the said Whitten, and hence it was that it was in my said deed, the call was, from the two birches on Simmons creek, thence up said creek with the Miller line. Wm. Miller got said land, I think, from Obediah Belcher, his father-in-law, and, finding that he could not pay for it, gave it up, and it was afterwards bought by Henry Saddler, as I understood. I owned said tract of 200 acres of land from about 1844 to 1852, when I conveyed it to Whitten, and all that time I claimed that the east line run from two birches up Simmons creek with the meanders thereof, and that the north line left said creek with the course south 55 west 120 poles to the said six chestnuts—the chestnuts being a noted corner as well as the two birches—and I never heard this line called in question until the railroad run there and the lands became valuable, quite recently. This was my
229 understanding of it all the time, although the deed may convey it differently; I can't tell.

25 Q. Have you stated all you know about this land and all you recollect about it?

Ans. All I recollect at present. It is all I can say about it.

And further deponent saith not.

ROBERT D. BELCHER.

UNITED STATES OF AMERICA, *District of West Virginia,* } *ss:*

I, Joseph Ruffner, a commissioner of the district court of the United States for the district of West Virginia, do hereby certify that the foregoing deposition of Robert D. Belcher was when taken then and there reduced to writing by me in the presence of said deponent and by him subscribed in my presence after having been so reduced to writing. I further certify that I am not of counsel nor attorney to either of the parties to this suit nor interested in the event of this cause.

Given under my hand this 30th day of April, 1887.

JOSEPH RUFFNER,
Commissioner as Aforesaid.

(The following exceptions are endorsed on the foregoing deposition of Robert D. Belcher, and are in the words and figures following, to wit:)

The defendant excepts to the entire deposition and each portion thereof, to every question and answer, for the following reasons:

1st. The witness does not prove that the supposed deed from Chrispianos to himself is lost. On the contrary, he distinctly traces
230 the deed to Wm. Whitten, the remote grantor of complainant (see answer to 24 question). The deed thus being in existence, its contents cannot be proved by oral testimony, the deed being the best and primary evidence.

2. So much of the deposition as gives the understanding and belief of the witness as to what was meant or intended by the deed or witness's construction of the deed or his conversations and transactions with others is clearly illegal and improper.

11th May, 1887.

REYNOLDS & QUARRIER, *For D'f'ts.*

(The following endorsement is to be found on the back of the foregoing deposition of Robert D. Belcher—that is to say:)

U. S. Dist. C't, D. W. Va.

JOS. I. DORAN
vs.
THE SIMMONS CREEK —. } In Equity.

Deposition of Robert D. Belcher, taken before me April 30th, 1887.

JOS. RUFFNER,
U. S. Comm'r, D. W. Va.

Filed May 2d, 1887.
Teste:

J. Y. MOORE,
Clk D. C. U. S., D. W. Va.

Commissioner's fee, — dollars.

231 Ex. "A" filed with R. D. Belcher's deposition is in the words and figures following, to wit:

This indenture, made this 23rd day of December, 1852, between Robert D. Belcher and Rebecca, his wife, of the one part, and William H. Witten, of the other part, both of the county of Mercer and State of Virginia, witnesseth: That, in consideration of the sum of one hundred and twenty-five dollars paid to the said R. D. Belcher by the said William H. Witten, the said R. D. Belcher doth grant unto the said William H. Witten, his heirs, &c., all that tract of land, containing by estimation two hundred acres, be the same more or less, lying in Mercer county, on Simmons creek, waters of Bluestone, and bounded as follows, to wit: Beginning at two birches on
232 Simmons creek, corner to Crispianos Belcher's land, thence up said creek with Miller's line S. 55 W. 120 poles to six chestnuts, corner to Miller's survey, and with the same S. 35° E. 310 poles

to a do-ble and single popular, corner to said Belcher, and with the same N. 40° E. 250 poles to the beginning; and the said Robert D. Belcher and Rebecca, his wife, doth for themselves and their -eirs hereby covenant and warrant a general title to the above-conveyed land.

Witness the following signatures and seals.

ROBERT D. BELCHER. [SEAL.]

her

REBECCA x BELCHER. [SEAL.]

mark.

MERCER COUNTY, *To wit:*

This day Robert D. Belcher, party to the annexed deed, dated the 23rd day of December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be his act and deed, and directed me to certify said acknowledgment to the clerk of Mercer county tha- the deed may be recorded.

Given under my hand this 7 day of May, 1853.

G. P. BROWN, *J. P.*

MERCER COUNTY, *To wit:*

This day Rebecca Belcher, wife of said Robert D. Belcher, a party to the within deed, bearing date the 23rd day of December, 1852, personally came before us, justices of the peace in said county, and, being examined by us privily and apart from her husband and having the deed explained to her, acknowledged the same to be her act and deed; that she had willingly signed it, and that she does not wish to retract it, and directed us to certify to the clerk of Mercer county court that said deed may be recorded.

233 Given under our hands this 7 day of May, 1853.

GEO. P. BROWN, *J. P.*

ELI BAILEY, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belcher & wife to William H. Witten, conveying land, with a certificate of acknowledgment and privitly examination before two justices annexed, was this day presented in court — ordered to be recorded.

Teste: W. F. HEPTINSTALL, *D. C.*

234 The deposition of S. P. Pearis filed in this cause is in the words and figures following, to wit:

The deposition of Samuel P. Pearis, taken before me, H. B. Barbor, a notary public for Mercer county, West Va., at the clerk's office of the county court of said county, on the 1st day of May, 1886, by consent of parties.

Said deposition, when taken, is intended to be read as evidence on behalf of the plaintiff in a certain suit in chancery depending in the district court of the United States for the district of West Virginia, sitting at Charleston, in said State, wherein Joseph I.

Doran is plaintiff and The Simmons Creek Coal Company are defendants.

Present: S. D. May, att'y for complainant, Joseph I. Doran, and A. W. Reynolds, att'y for the defendants.

S. P. PEARIS, a witness of lawful age, being first duly sworn, deposes and says:

Ques. 1 by att'y for complainant. You will state what office, if any, you hold in the county of Mercer, West Virginia.

Ans. I am the clerk of Mercer county court.

Ques. 2nd by same. Please examine deeds of record in your office from Robert D. Belcher and wife to W. H. Witten, of date December 23, 1852, conveying 200 acres, more or less, of land, and from Robert D. Belcher & wife, Chrispianos Belcher & wife, to said W. H. Witten, of same date, conveying 1,100 acres of land, more or less, and from William Witten to said W. H. Witten, of date
234½ September 25, 1852, conveying 400 acres of land, more or less, and file copies of said deeds with your deposition, and state when said lands were first charged on the land books of your said county, and for what years thereafter charged to said W. H. Witten.

Exception.—The foregoing question and the copy of deed from Robert D. Belcher & Chrispianos Belcher & wives to Wm. H. Witten for 1,100 acres, and copy of William Witten to Wm. H. Witten conveying 400 acres, are excepted to by att'y for Simmons Creek Coal Company because they are irrelevant and for other reasons.

Ans. I have examined the deeds above referred to. The 200-acre tract was first charged in the name of Wm. H. Witten on the land books of said county in the year 1854 by deed from Robert D. Belcher, and the tract of 1,100 acres was first charged in the name of said Wm. H. Witten in the year 1854 by deed from Rob't D Belcher *et al.*, and the tract of 400 acres was first charged on the land books of said county in the name of Wm. H. Witten in the year 1853 by deed from Wm. Witten. I here file copies of said deeds as part of my deposition, marked (200-acre tract) "A No. 1," (1100-acre tract) "A No. 2," (400-acre tract) "D. B. No. 3, page 457." I here file an extract from the land books of my said county, showing the charges of all the lands of Wm. H. Witten charged thereon from the year 1852 to 1885, inclusive, marked "Extract from land books, with S. P. Pearis' deposition." Said extract shows everything in relation to said charges except the taxes assessed upon the total value of each tract.

234*a* EXHIBIT

"Extract from Land Books with S. P. Pearis' Deposition." Opened and filed May 20th, 1886.

Teste: JASPER Y. MOORE,
Clk D. C. U. S., D. W. V.

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1852:					
Witten, William	Mercer	Fee	200		Abb's Valley
Same	"	"	160		Brushy Fork
Same	"	"	183		" "
Same	"	"	242		" "
Same	"	"	600		Abb's Valley
Witten, Wm. H., with Thomas G.	"	"	159		Bluestone
For the year 1853:					
Witten, William	Mercer	Fee	200		Mouth Abb's Valley.
Same	"	"	200		Abb's Valley
Same	"	"	138		Brushy Fork
Same	"	"	183		Same
Same	"	"	242		Brushy Fork
Witten, William H	"	"	400		Abb's Valley
Same with Robert Graham.	"	"	B.		Simmons Fork
Same with Thomas G. Witten.	"	"	159		Bluestone
For the year 1854:					
Witten, William H.	Mercer	Fee	200		Simmons Creek
Same	"	"	1,100		Bluestone & Elkhorn.
Same	"	"	400		Abb's Valley
Same with Robert Graham.	"	"	150		Simmons Fork
Same with Thomas G. Witten.	"	"	159		Bluestone
Witten, William	"	"	200		Chg. Wm. H., mouth Abb's Valley.
Same	"	"	138		Brushy Fork
Same	"	"	183		" "
Same	"	"	242		" "
For the year 1855:	There is no	land book	in the	office	for this year.
For the year 1856:					
Witten, William H.	Mercer	Fee	200		Bluestone
Same	"	"	400		Abb's Valley
Same	"	"	200		Simmons Fork
Same	"	"	1,100		Bluestone & Elkhorn.
Same with R. Graham	"	"	150		Simmons Fork
Witten, William	"	"	138		Brushy "
Same	"	"	183		" "
Same	"	"	242		" "

for the Year 1887.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	15	12	200	2,400	
"	14	2	100	320	
"	14	1	-------	183	
"	14	1	-------	242	
"	15	25	-------	150	
W	13	1	-------	159	
W	15	1 50	-------	300	Deeded by Thomas G. Witten & wife.
"	"	12	200	2,400	
"	14	2	100	276	
"	14	1	-------	183	
W	14	1	-------	242	
W	15	25	-------	100	Deeded by Wm. Witten.
W	15	-------	-------	200	Deeded by William Payne & wife.
W	13	1	-------	159	
W	16	25	-------	50	Deeded by Robert D. Belcher & wife.
"	20	25	-------	275	Deeded by Robert D. Belcher & wife & Chrispianos Belcher & wife.
W	15	6	-------	2,400	
"	15	1 33⅓	-------	200	
"	13	1	-------	159	
"	15	1 50	-------	300	
"	14	2	100	276	
"	14	1	-------	183	
"	14	1	-------	242	
W	15	1 50	-------	300	
"	"	6	-------	2,400	
"	16	25	-------	50	
"	20	-------	-------	275	
"	15	1 33⅓	-------	200	
"	14	2 00	-------	276	
"	"	1	-------	183	
"	"	1	-------	242	

234c *Table of Tracts of Land*

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1857:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	200		Upper Simmons Fork.
Same	"	"	1,100		Flat Top
Same & R. Graham	"	"	150		Simmons Fork
Witten, William	Missouri	"	312		Brushy Fork
Same	"	"	242		" "
For the year 1858:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	200		Upper Simmons Fork.
Same	"	"	1,100		Flat Top
Safne & R. Graham	"	"	150		Simmons Fork
Witten, William	Missouri	"	312		Brushy Fork
Same	"	"	242		" "
For the year 1859:	There is no	land book	in the	office	for this year.
For the year 1860:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	200		Upper Simmons Fork.
Same	"	"	1,100		Flat Top
For the year 1861:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	200		Simmons Fork
Same	"	"	1,100		Flat Top
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
Witten, Wm. H., & Robt. Graham.	"	"	150		Simmons Fork
For the year 1862:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	200		Simmons Fork
Same	"	"	1,100		Flat Top
235					
Witten, William H.	Mercer	Fee	313		Brushy *Creek*
Same	"	"	242		" "
Same & R. Graham	"	"	150		Simmons Fork
For the year 1863:					
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	15	11	100	2,200	
"	15	11	150	4,400	
"	16	25	------	50	
"	20	25	------	275	
"	15	1 50	------	220	
"	14	4 00¾	150	1,250	
"	"	1 50¾	------	365	
W	15	11	100	2,200	
"	"	11	150	4,400	
"	16	25	------	50	
"	20	25	------	275	
"	15	1 50	------	220	
"	14	4 00¾	150	1,250	
"	"	1 50¾	------	365	
W	15	11	100	2,200	
"	"	11	150	4,400	
"	16	25	------	50	
"	20	25	------	275	
W	15	11	100	2,200	
"	"	11	150	4,400	
"	16	25	------	50	
"	20	25	------	275	
"	14	3 99½	150	1,250	No explanation as to how these two tracts ch'd to Wm. H.
"	"	1 50¾	------	365	
"	15	1 46½	------	220	
W	15	11 00	100	2,200	
"	"	11 00	150	4,400	
"	16	25	------	50	
"	20	25	------	275	
W	14	3 99½	150	1,250	
"	"	1 50¾	------	365	
"	15	1 46½	------	220	
W	15	11 00	100	2,200	
"	"	11 00	150	4,400	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1863 continued:					
Same	Mercer	Fee	200		Simmons Fork
Same	"	"	1,000		Flat Top
Same	"	"	313		Brush Fork
Same	"	"	242		" "
Same & R. Graham	"	"	150		Simmons Fork
For the year 1864:	There is no	land book	in this	office	for this year.
For the year 1865:	Beaver Pond	District.			
Whitten, Wm. H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brush Fork
Same	"	"	242		" "
	Rock	District.			
Witten, Wm.	"	"	200		Simmons Fork
Same	"	"	1,000		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1866:	Beaver Pond	District.			
Whitten. Wm. H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
	Rock	District.			
Whitten, Wm.	"	"	200		Simmons Fork
Same	"	"	1,000		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1867:	Beaver Pond	District.			
Whitten, Wm. H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" do.
Same	"	"	313		Brush Fork
Same	"	"	242		" do.
236					
	Rock	Dist.			
Whitten, William	Mercer	Fee	200		Simmons Fork
Same	"	"	1,000		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1868:	Beaver Pond	District.			
Whitten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brush Fork
Same	"	"	242		" "
	Rock	District.			
Whitten, Wm. H.	"	"	200		Simmons Fork
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1869:	Beaver Pond	District.			
Whitten, William H.	Mercer	Fee	200		Abb's Valley

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	16	25	-------	50	
"	20	25	-------	250	No explanation of reduction.
"	14	3 99$\frac{1}{2}$	150	1,250	
"	"	1 50$\frac{3}{4}$	-------	365	
"	15	1 46$\frac{1}{2}$	-------	220	
W	15	11	100	2,200	
"	"	11	150	4,400	
"	14	4	150	1,250	
"	"	1 50	-------	365	
"	16	50	-------	100	
"	20	50	-------	500	
"	15	1 46$\frac{1}{2}$	-------	220	
W	15	11 00	100	2,200	
"	"	11 00	150	4,400	
"	14	4 00	150	1,250	
"	"	1 51	-------	365	
"	16	50	-------	100	
"	20	50	-------	500	
"	15	1 56$\frac{1}{2}$	-------	250	
W	15	11 00	100	2,200	
"	"	11 00	150	4,400	
"	14	4 00	150	1,250	
"	"	1 51	-------	365	
W	16	50	-------	100	
"	20	50	-------	500	
"	16	1 56$\frac{1}{4}$	-------	250	
"	15	10 12	100	2,024	
"	"	10 12	150	4,048	
"	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
"	16	46	-------	92	
"	20	46	-------	368	
"	15	1 34$\frac{1}{2}$	-------	201 37	No explanation of reduction in acres or price.
W	15	10 12	100	2,024	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1869 continued:					
Same	Mercer	Fee	400		Abb's Valley
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
	Rock District.				
Whitten, William H.	"	"	200		Simmons Fork
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1870:	Beaver Pond District.				
Whitten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
	Rock District.				
Whitten, William H.	"	"	200		Simmons Fork
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1871:	Beaver Pond District.				
Whitten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
	Rock District.				
Whitten, Wm. H.	"	"	200		Simmons Fork
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Fork
237 For the year 1872:	Beaver Pond District.				
Witten, Wm.	Mercer	Fee	200		Abb's Valley
Same	"	"	400		" "
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
	Rock District.				
Witten, Wm. H.	"	"	200		Simmons Creek
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Fork
For the year 1873:	Beaver Pond District.				
Witten, Wm.	Mercer	Fee	200		Abb's Valley
Same	"	"	360		" "
Same	"	"	313		Bushy Fork
Same	"	"	242		" "
	Rock District.				
Witten, Wm. H.	"	"	200		Simmons Creek
Same	"	"	800		Flat Top
Same & Graham	"	"	150		Simmons Creek
For the year 1874:	Beaver Pond District.				
Witten, William	Mercer	Fee	200		Abb's Valley
Same	"	"	360		" "

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	15	10 12	150	4,048	
"	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
"	16	46	-------	92	
W	20	46	-------	368	
W	15	1 34½	-------	201 37	
W	15	10 12	100	2,024	
"	"	10 12	150	4,048	
"	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
"	16	46	-------	92	
W	20	46	-------	368	
W	15	1 34½	-------	201 37	
W	15	10 12	100	2,024	
"	"	10 12	150	4,048	
"	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
"	16	46	-------	92	
N	20	46	-------	368	
W	15	1 34½	-------	201 37	
W	15	10 12	100	2,024	
"	"	10 12	150	4,048	
"	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
N W	20	46	-------	92	
W	15	46	-------	368	
W	15	1 34½	-------	201 37	
S W	15	10 12	100	2,024	
"	"	10 12	150	3,643 20	No explanation of reduction.
W	14	3 68	100	1,151 84	
"	"	1 15	-------	333 96	
N W	20	46	-------	92	
"	25	46	-------	368	
"	15	1 34½	-------	201 37	
W	15	10 12	100	2,024	
"	"	10 12	150	3,643 20	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1874 continued:					
Same	Mercer	Fee	313		Brushy Fork
Same	"	"	242		
Witten, Wm. H.	"	"	200		Simmons Creek
Same	"	"	500		Flat Top
Same & Graham	"	"	150		Simmons Creek
For the year 1875:	Beaver Pond	District.			
Witten, William H.	Mercer	Fee	200		Abb's Valley
Same	"	"	360		" "
Same	"	"	313		Brush Fork
Same	"	"	242		" "
Witten, William H.	"	"	200		Simmons Creek
Same	"	"	500		" "
Same & Graham	"	"	150		" "
For the year 1876:	Beaver Pond	District.			
Witten, Wm. H.	Mercer	Fee	185		Abb's Valley
Same	"	"	360		" "
Same	"	"	313		Brushy Fork
Same	"	"	242		" "
238	Rock Distri	ct.			
Witten, Wm. H.	Mercer	Fee	200		Simmons Creek
" Same	"	"	500		
Same & Graham	"	"	150		
For the year 1877:	Beaver Pond	District.			
Witten, William H.	Mercer	Fee	185		Abb's Valley
" Same	"	"	360		" "
" Same	"	"	313		Bushy Fork
" Same	"	"	242		" "
	Rock Distri	ct.			
Witten, Wm. H.	"	"	200		Simmons Creek
" Same	"	"	500		" "
Same & Graham	"	"	150		" "
For the year 1878:	Beaver Pond	District.			
Witten, William H.	Mercer	Fee	185		Abb's Valley
Same	"	"	360		" "
Same	"	"	313		Bushy Fork
Same	"	"	242		" "
	Rock Distri	ct.			
Witten, William H.	"	"	200		Simmons Creek
" Same	"	"	500		" "
Same & Graham	"	"	150		" "
For the year 1879:	Beaver Pond	District.			
Witten, William H.	Mercer, W. Va.	Fee	185		Abb's Valley
Same	"	"	360		" "

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	14	3 68	100	1,151 84	
"	14	1 15	------	333 96	
N W	20	46	------	92	
"	15	46	------	235	No expla'tion of reduction.
"	"	1 34½	------	201 37	
W	15	10	100	2,000	
"	"	10	150	3,600	
"	14	3 58	------	1,152	
"	"	2	------	484	
"	20	50	------	100	
"	15	75	------	375	
"	20	1	------	150	
W	15	10	------	1,850	No explanation of reduction.
"	"	10	150	3,600	
"	14	3 58	------	1,152	
"	"	2 00	------	484	
W	20	50	------	100	
"	15	75	------	375	
"	20	1 00	------	150	
W	15	10	------	1,850	
"	"	10	150	3,600	
"	14	3 58	------	1,150	
"	"	2 00	------	484	
"	20	50	------	100	
"	15	75	------	375	
"	20	1 00	------	150	
W	15	10	------	1,850	
"	"	10	150	3,600	
"	14	3 58	------	1,150	
"	"	2 00	------	484	
"	20	50	------	100	
"	15	75	------	375	
"	20	1 00	------	150	
W	15	10 00	------	1,850	
"	"	10 00	150	3,600	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1879 continued:	Rock District.				
Witten, William H.	"	Fee	200		Simmons Creek
Same	"	"	500		" "
Same & Graham	"	"	150		" "
For the year 1880:	Beaver Pond District.				
Witten, Wm. H.	Mercer, W. Va.	Fee	133	.80	Abb's Valley
Same	"	"	360		" "
	Rock District.				
Witten, William H.	"	"	200		Simmons Creek
Same	"	"	500		" "
Same & Graham	"	"	150		" "
For the year 1881:	Beaver Pond District.				
Witten, Wm. H.	Mercer, W. Va.	Fee	133		Abb's Valley
239 " Same	"	"	360		" "
	Rock District.				
Witten, Wm. H., & Graham.	Mercer, W. Va.	Fee	150		Simmons Creek
Witten, Wm. H., H. W. Straley, J. D. & D. E. Johnston, & John A. Douglass.	"	"	702		Simmons & Mill Creek.
Same	"	"	Mineral interest 148 acres charg		
For the year 1882:	Beaver Pond District.				
Witten, Wm. H.	Mercer, W. Va.	Fee	133		Abb's Valley
Same	"	"	360		" "
	Rock District.				
Witten, Wm. H., H. W. Straley, J. D. & D. E. Johnston, and John A. Douglass.	"	"	702		
Same	"	"	Mineral interest 148 acres charg		
For the year 1883:	Beaver Pond District.				
Witten, William H.	Mercer, W. Va.	Fee	133		Abb's Valley
" Same	"	"	360		do.
	Rock District.				
Witten, Wm. H., & H. W. Straley, J. D. & D. E. Johnston, & John A. Douglass.	"	Fee	702		Simmons & Mill Creek.
Same	"		Mineral interest in 148 acres		
For the year 1884:	Beaver Pond District.				
Witten, Wm. H.	Mercer, W. Va.	Fee	133		Abb's Valley
Same	"	"	360		" do.
	Rock District.				
Witten, Wm. H., & H. W. Straley.	"	"	816		Simmons & Mill Creek.
Same	"	"	Mineral interest 148 acres chgd.		

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	Explanations. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	20	50		100	
"	15	75		375	
"	20	1 00		150	
W	15	10 00		1,335	No explanation of reduction here.
"	"	10 00	150	3,600	
"	20	50		100	
"	15	75		375	
"	20	1 00		150	
W	15	10 00		1,335	
"	"	10 00	150	3,600	
W	20	1 00		150	
W	15	75		526 50	
ed James H. Perdue				37 00	
W	15	10 00		1,335	
"	"	10 00	150	3,600	
W	15	51½		362 47	
ed to James H. Perdue				37	
W	15	16 50	250	2,194 50	
"	12	13 20		4,752	
W	15	1 10		772 20	
chgd. to James H. Perdue		37½		55	
W	15		250	2,194 50	
"	12			4,752	The other interest deeded here & surveyed as 816, bef. chgd. as 702.
W	15			897 60	
to Jas. H. Perdue				55	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1885:	Beaver Pond District.				
Witten, Wm. H.	Mercer, W. Va.	Fee	133		Abb's Valley
Same	do.	"	360		do.
	Rock District.				
Witten, Wm. H., & H. W. Straley.	do.	"	816		Simmons Creek

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	EXPLANATIONS. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C.H.	Miles distant.				
7	8	9	10	11	16
W	15	----------	250	2,194 50	
"	12	----------	----------	4,752	
"	15	----------	----------	687	⅜ minerals off; ⅝ off heretofore.

WEST VIRGINIA, *County of Mercer*, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct extract from the land books of said county of all the land charged thereon in the name of Wm. H. Witten from the year 1852 to the year 1885, inclusive, as shown by the records of my office.

Given under my hand this 1st day of May, 1886.

SAM'L P. PEARIS,
Clerk Mercer County Court.

Fee for copy & s'ch's, $11.50, charged to Joseph I. Doran.

Ques. No. 3 by same. Do the records of your office show that any of said lands of said Wm. H. Witten were ever returned delinquent for non-payment of taxes?

Ans. There has never been a record made of the returns of delinquent lands. I have examined the records of the sales of delinquent lands for this county, and there is no record that any of Wm. H. Witten's lands was ever sold for the non-payment of taxes.

Ques. No. 4 by same. Please state what tract or tracts of land have been charged upon the land books of said county to Chrispianos Belcher since the year 1850 to the present time.

Ans. I here file an extract from the land books showing all the land charged upon said books to Chrispianos Belcher from 1850 to 1855, inclusive, marked "Extract from Land Books, Chrispianos —— Lands."

240 EXHIBIT

"Extract from Land Books, Chrispianos Belcher Lands," with S. P. Pearis' Deposition. Opened and filed May 20th, 1886.

Teste: JASPER Y. MOORE,
Clk D. C. U. S., D. W. Va.

241 *Table of Tracts of Land*

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owners estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, reference to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1850:					
Belcher, Chrispianos	Mercer	Fee	650		Bluestone River
For the year 1851:					
Belcher, Chrispianos	Mercer	Fee	650		Bluestone
242 For the year 1852:					
Belcher, Chrispianos	Mercer	Fee	650		Bluestone
For the year 1853:					
Belcher, Chrispianos	Mercer	Fee	650		
For the year 1854:					
Belcher, Chrispianos	Mercer	Fee	650		Bluestone
Same	"	"	200		Philipin's Ridge & Crane Creek.
For the year 1855:	Mercer	"			
	There is no land book in the office for this year.				
For the year 1856:					
Belcher, Chrispianos	Mercer	Fee	650		Bluestone
Same	"	"	200		Philipin's Ridge & Crane Creek.
For the year 1857:					
Belcher, Chrispianos	Mercer	Fee	10		Bluestone
Same	"	"	200		Crane Creek
For the year 1858:					
Belcher, Chrispianos	Mercer	Fee	10		Bluestone
For the year 1859:	There is no land book in the office for this year.				
For the year 1860:					
Belcher, Chrispianos	Mercer	Fee	10		Bluestone
For the year 1861:					
Belcher, Chrispi A.	Mercer	Fee	10		Bluestone
For the year 1862:					
Belcher, Chrispi A.	Mercer	Fee	10		Bluestone
For the year 1863:					
Belcher, Chrispie A.	Mercer	Fee	10		Bluestone
For the year 1864:	There is no land book in this office for this year.				
243 For the year 1865:					
Belcher, Chrispi A.	Mercer	Fee	10		Bluestone
For the year 1866:					
Belcher, Chrispia	Mercer	Fee	10		Bluestone
For the year 1867:					
Belcher, Chrispia	Mercer	Fee	10		Bluestone

for the Year 1887.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	EXPLANATIONS. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
W	10	20 00	.....	130	Deeded by Robert Belcher.
W	10	50	.....	325	
W	10	50	.....	325	
W	10	50	.....	325	
W	10	50	.....	325	Back tax & interest added from 1843; part of 1,500-acre survey; balance deeded away.
"	11	50	.....	100	
W	10	50	.....	325	
W	11	50	.....	100	
W	10	50	.....	5	640 deed to Henry Walker.
"	11	50	.....	100	
N W	10	50	.....	5	
N W	10	50	.....	5	
N W	10	50	.....	5	
N W	10	50	.....	5	
N W	10	50	.....	05	
N W	10	50	.....	5	
N W	10	50	.....	5	
N W	10	50	.....	5	

Table of Tracts of Land

Name of the person who, by himself or by his tenant, has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.		Name of the tract, if it has a name, local description of land, refererce to water-courses, mountains, or other places on or near which it lies.
			Acres.	Fractions.	
1	2	3	4	5	6
For the year 1868: Belcher, Chrispianos	Mercer	Fee	00		Bluestone
For the year 1869: Belcher, Chrispianos	Mercer	Fee	10		Bluestone
For the year 1870: Belcher, Chrispyanos	Mercer	Fee	10		Bluestone
For the year 1871: Belcher, Chrispyanos	Mercer	Fee	10		Bluestone
For the year 1872: Belcher, Chrispianos	Mo.	Fee	10		Bluestone
For the year 1873: Belcher, Chrispianos	Missouri	Fee	10		Bluestone
For the year 1874: Belcher, Chrispianos	Mo.	Fee	10		Bluestone
For the year 1875: Belcher, Chrispianos	Missouri	Fee	10		Bluestone
For the year 1876: Belcher, Chrispianos	Missouri	Fee	10		Bluestone
For the year 1877: Belcher, Chrispie Anes	Missouri	Fee	10		Bluestone
For the year 1878: Belcher, Chrispianos	Missouri	Fee	10		Bluestone
244 For the year 1879: Belcher, Chrispernon	Missouri	Fee	10		Bluestone
For the year 1880.					
For the year 1881.					
For the year 1882.					
For the year 1883.					
For the year 1884.					
For the year 1885.					

for the Year 1887—Continued.

Distance and bearing from court-house.		Value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	EXPLANATIONS. From whom, when, and how the owner derived the land, where that is known, with a note and explanation of any alteration made, showing why and upon what authority it was made.
Bearing from C. H.	Miles distant.				
7	8	9	10	11	16
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
N W	10	46	-------	4 60	
W	10	50	-------	5	
W	10	50	-------	5	
W	10	50	-------	5	
W	10	50	-------	5	
W	10	50	-------	5	

WEST VIRGINIA,
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do hereby certify that the foregoing writing is a true & correct copy of the entry of the lands of Chrispianos Belcher from the year 1850 to the year 1885, inclusive, upon the land books of my said county, as shown by the records of my office.

Given under my hand this 1st day of May, 1886.

SAM'L P. PEARIS,
Clerk Mercer County Court.

Fee for copy & s'ch's, $6.75, ch'g'd to Jos. I. Doran.

245 Ques. No. 5 by same. It appears from the extract filed with your deposition, marked "Extract from Land Books, Chrispianos Belcher's Lands," that there is a two-hundred-acre tract of land charged to said Chrispianos Belcher from the year 1854 to the year 1857 and then dropped from the land books of this county. You will state if the records of your office show that Chrispianos Belcher conveyed to Obediah Belcher said 200 acres of land on the 13th day of February, 1857; and, if so, file a copy of the deed with your answer.

246 Ans. The records of my office show the conveyance from Chrispianos Belcher & wife to Obediah Belcher of a 200-acre tract of land, which conveyance is dated February 13th, 1857, and I here file a copy of it, marked "Deed Book No. 4, p. 373," as part of this answer.

Ques. No. 6 by same. It will be seen from said extract that 10 acres of land was charged to Chrispianos Belcher from the year 1857 to the year 1879. I now ask you to examine the list of real estate within the county of Mercer sold for the non-payment of taxes in the year 1879, and state if said 10 acres of land was sold for non-payment of taxes.

Ans. Said 10 acres of land was sold in the year 1879 for the non-payment of the taxes due thereon for the years 1877 & *and* 1878, and was also sold same year for taxes of year 1876, and was purchased for the State of West Virginia, as shown by said records.

Exception.—(The last two questions and answers are excepted to by att'y for defendants because they — irrelevant.)

Ans. There is only one conveyance to Chrispianos Belcher on record in my office calling for "about" 1,500 acres of land, which conveyance is from Obediah Belcher & wife, & only one other conveyance to him, which is for 640 acres of land from Robert Belcher and wife.

Ques. No. 7 by same. Please file with your deposition copy of deed from Chrispianos Belcher & wife to Henry Walker, of date April 12th, 1856, and state who conveyed said land to said Belcher, and when.

247 Ans. I here file copy of said deed, marked "D. B. No. 4, pg. 339." There is a deed on record in my office from Robert Belcher & wife to Chrispianos Belcher for 640 acres of —, with same local description, dated the — day of ——, 1848, which I believe to be the same land conveyed by Chrispianos Belcher to Henry Walker.

Ques. No. 8 by same. Did you not record the lease from the Simmons Creek Coal Company to Joseph Taylor & Co., lessees to the land in controversy? And, if so, state in whose handwriting said lease was written.

(The foregoing question and any answer that may be given thereto are excepted to by att'y for defendants because they are immaterial and irrelevant.)

Ans. I did record said lease, and my recollection is that it was in the handwriting of David E. Johnston.

Ques. No. 9 by same. Is not said David E. Johnston judge of the circuit court of Mercer county, West Virginia, and how long has he been such judge?

248 Ans. He is, and has been since 1880, is my recollection.

(The last question and answer are excepted to by defendants because they are irrelevant and improper.)

Cross-examination by att'y for defendants:

Question No. 1. Please examine the land books in your office for Mercer county for the year 1844 to the year 1854, inclusive, and state whether or not there was a tract of 200 acres on a tract called "200 acres, more or less," situate on Simmons creek, charged to Robert D. Belcher for any of those years.

Ans. There was no one tract of 200 acres charged to said Robert D. Belcher during that period, though there was land charged to him, beginning in the year 1851, as 1,500 acres, which up to 1854 appeared as only 300 acres, by reason of land having been transferred from it at two or three different times. In the year 1852 it appeared again as 1,500 acres to said Robert D. Belcher; in 1853 said charge appeared as 500 acres, with a note under head of explanation, &c., "150 acres transferred to Jacob Wimmer, and the 850 acres heretofore ch'g'd has been heretofore transferred." In the year 1854 said charge appeared as 300 acres, with a note under head of explanation, &c., "200 acres deeded to William H. Witten." This is the only land charged to said Robert D. Belcher during said period. I might here add that the land books for the years 1848 & 1849 have been missing for a long time.

249 Ques. 2 by same. Please examine the records of your office and see by whom said fifteen hundred acres were conveyed to said Robert D. Belcher, and file a copy of the deed conveying the same to him.

Answer. I suppose it was conveyed by James Hector to Robert Belcher by deed dated May 11, 1842, a certified copy of which I file with this answer, marked D. B. 2, page 211.

Re-examination:

Quest. 1 by counsel for plaintiff. Please examine records of your office and state what conveyances, if any, were made by Robert D. Belcher to said W. H. Witten other than the said two conveyances of 200 acres of land, more or less, & 1,100 acres of land, more or less, both of date Dec'r 23, 1852, recorded in Deed Book 3, pages 522 & 523 respectively, copies of which are filed with your deposition, marked "A No. 1 & A No. 2."

Answer. The two deeds that you have referred to as having been already filed as part of my deposition, marked A No. 1 & A No. 2, are the only conveyances that I can find of real estate on record in my office from Robert D. Belcher to Wm. H. Witten.

Quest. No. 2 by same. Please state what lands, if any, were charged

on the land books of Mercer county to Chrispianos Belcher prior to the year 1850.

Answer. There were no lands charged to Chrispianos Belcher on said land books prior to the year 1850; land books for 1848 & 1849 missing, as heretofore stated.

250 Exception.—The last question and answer are excepted to by defendants' counsel because they are immaterial.

Quest. No. 3 by same. Did you record the deed from Chrispianos Belcher to George W. Belcher, of date October 18, 1884, conveying the land in controversy? If so, was not said original deed in the handwriting of defendant, I. A. Welch, & what became of said original deed?

Answer. I did record the deed. I cannot recall the handwriting. The original deed was delivered to A. W. Reynolds June 11, 1885.

Quest. No. 4 by same. To whom has the two-hundred-acre tract of land been charged on the land books in your office since it was charged to W. H. Witten?

Answer. It has been charged to Joseph I. Doran and the Southwest Virginia Improvement Company, as set forth in a certified statement heretofore given by me and which I understand is filed with the deposition of W. Scott Witten, taken in this cause.

And, no more questions being asked, further this deponent says not.

SAM'L P. PEARIS.

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, H. B. Barbour, a notary public for the county of Mercer, in said State, do certify that the foregoing deposition of Sam'l P. Pearis was duly taken, subscribed, and sworn to before me at the times, place, and for the purpose mentioned in the caption hereof (by
251 consent of parties.)

Given under my hand this 1st day of May, 1886.

H. B. BARBOUR,
N. P., Mercer County, West Va.

Tax'n of Costs Jos. I. Doran.

Notary, 7 hours, at 75c.	$5 25
Same, 1 witness ticket	30
S. P. Pearis, wit., 1 day	1 50
Clerk of Co. court (ex's)	20 60
	$27 65

Simmons Creek Coal Co. to clerk Co. court (ex's), 85c.

(Exhibit "A No. 1" filed with the deposition of S. P. Pearis is in the words and figures following, to wit:)

This indenture, made this 23rd day of December, 1852, between

Robert D. Belcher and Rebecca, his wife, — the one part, and William H. Witten, of the other part, both of the county of Mercer and State of Virginia, witnesseth: That, in consideration of the sum of one hundred and twenty-five dollars paid to the said R. D. Belchar by the said William H. Witten, the said R. D. Belchar doth grant unto the said William H. Witten, his heirs, &c., all that tract of land, containing by estimation two hundred acres, be the same more or less, lying in Mercer county, on Simmons creek, waters of Bluestone, and — as follows, to wit: Beginning at two birches on Simmons creek, corner to Chrispianos Belchar's land, thence up said creek with Miller line S. 55° W. 120 poles to six chestnuts, corner to Miller survey, and with the same S. 35° E. 310 poles to a do-ble and single poplar, corner to said Belchar, and with the same N. 40° E. 250 poles to the beginning; and the said Robert D. Belchar and Rebecca, his wife, do*th*, for themselves and -heir -eirs, hereby covena-t and warrant a general title to the above-conveyed land.

252 Witness the following signatures and seals.

ROBERT D. BELCHER. [SEAL.]

her

REBECCA x BELCHER. [SEAL.]

mark.

MERCER COUNTY, *To wit:*

This day Rebecca Belcher, wife of said Robert D. Belcher, a party to the within deed, bearing date 23rd day of December, 1852, personally came before us, justices of the peace in said county, and, being examined by us privi*t*ly and apart from her husband and having the deed explained to her, acknowledged the same to be her act and deed, and that she had willingly signed it, and that she does not wish to retract it, and directed us to certify to the clerk of Mercer county court that said deed may be recorded.

Given under our hands this 7th day of May, 1853.

GEO. P. BROWN, *J. P.*
ELI BAILEY, *J. P.*

MERCER COUNTY, *To wit:*

This day Robert D. Belcher, party to the annexed deed, dated 23rd day of December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be his act and deed, and directed me to certify said acknowledgment to the clerk of Mercer county court that *tha* deed may be recorded.

Given under my hand this 7th day of May, 1853.

G. P. BROWN, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belcher and wife to William H. Witten, conveying land, with a certificate of
253 acknowledgment and privy examination before two justices annexed, was this day presented in court and ordered to be recorded.

Teste: WM. T. HEPTINSTALL, *D. C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 15th day of January, 1886.

SAM'L P. PEARIS, *Clerk.*

65c. for copy.

(Exhibit "A No. 2" filed with deposition of S. P. Pearis is in the words and figures following, to wit:)

This indenture, made this 23rd day of December, 1852, between Robert D. Belcher and Rebecca, his wife, and Chrispianos Belcher and Rebecca, his wife, of the one part, and William H. Witten, of the other part, all parties of Mercer county, Virginia, witnesseth:

That, for and in consideration of the sum of thirty-five dollars in hand paid by the s'd William H. Witten, and in consideration thereof, the said Belchars do*th* grant unto the said William H. Witten all that tract of land, containing by estimation eleven hundred acres, be the same more or less, lying in Mercer county, Virginia, on the waters of Bluestone and Elkhorn, and bounded as follows, to wit, viz: Beginning at the north of Laurel, a branch of Bluestone, thence north 27 W. in the line of the Wilson Kery Nicholas 500,000-acre survey, and with the same about*e* 640 poles to 2 birches; thence continue on in said line 280 poles to a double birch on said line; thence
254 leaving said line north 55 E. 294 poles to six chestnuts; thence south 35 east 940 poles to the beginning; and the Belchars do*th*, for themselves and their -eirs, hereby covena-t and agree that they will warrant and defend a special title to the above-conveyed land.

Witness the following signatures and seals.

ROBERT D. BELCHAR. [SEAL.]

his
CHRISPIANOS x BELCHAR. [SEAL.]
mark.

her
REBECCA x BELCHER. [SEAL.]
mark.

her
REBECCA x BELCHER. [SEAL.]
mark.

MERCER COUNTY, *To wit:*

This day Robert D. Belchar & Chrispianos Belchar, parties to the annexed deed, dated the 23rd day of December, 1852, came personally before me, a justice of the peace in said county, and acknowledged the same to be their act and deed, and directed me to certify their acknowledgment to the clerk of Mercer county court that the deed may be recorded.

Given under my hand this 7th day of May, 1853.

G. P. BROWN, *J. P.*

MERCER COUNTY, *To wit:*

This day Rebecca Belcher, wife of Robert D. Belchar, and Rebecca Belchar, wife of Chrispianos Belcher, and parties to the within deed, bearing date the 23rd day of December, 1852, personally came before us, justiceses of the peace in said county, and, being examined by us privitealy and apart from their said husbands and having the deed explained to them, acknowledged the same to be their act and deed, and that *tha* had willing- signed it and *tha* did not wish to retract it, and directed us to certify their said acknowledgment to the clerk of Mercer county court that said deed may be recorded.

Given under our hands this the 7th day of May, 1853.

255 GEO. P. BROWN, *J. P.*
ELI BAILEY, *J. P.*

At Mercer County Court. June Term, 1853.

A deed of bargain and sale from Robert D. Belcher & wife and Chrispianos Belcher & wife to William H. Witten, conveying land, with a certificate of acknowledgment and privy examination before two justices annexed, was this day presented in court — ordered to be recorded.

Teste: W. F. HEPTINSTALL, *D. C.*

WEST VA., *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing instrument of writing is a true copy from the records of my office.

Given under my hand this 18th day of April, 1883.

SAM'L P. PEARIS, *Clerk.*

Exhibit "D. B. 3, page 457," filed with the deposition of S. P. Pearis, is in the words and figures following, to wit:

This indenture, made this 25th day of September, 1852, between William Witten, of the first part, and William H. Witten, of the second part, witnesseth: That, for and in consideration of the sum of fifteen hundred dollars in hand paid, the said party of the first part do- hereby give, grant, bargain, sell, and convey to the said William H. Witten, his heirs, &c., a certain tract or parcel of land lying in the county of Mercer, in Abb's Valley and on Laurel creek, a branch of Bluestone. That tract hereby conveyed is bounded as follows:

Beginning in Abb's Valley *on* a large white oak near the
256 road, a corner between said Wm. Witten & Thomas G. Witten, thence south 56 east 254 poles to three white oaks on the north side of the valley ridge; thence northwest in a line between said William Witten and Thomas Peery, crossing Abb's Valley, to two white oaks; thence northwest about 40 poles to a large double white oak, a corner between said Witten and said Peery; thence nearly due west to the top of the Laurel ridge about 80 poles

to 2 chestnut oaks; thence northwest about 150 poles to a stake on the Dyal Rock line near the oald foard of Laurel, on the east side of the same; thence northwest with the line of the same to Bluestone river, at the mouth of Laurel; thence up Bluestone, *fowling* the various m*y*anders of the same, about 350 poles to a cherry tree, corner of said Wittens & Thomas G. Wittens; thence southeast with the line of the same about 100 poles to the beginning; to have and to hold the said tract or parcel of land, estimated to contain 400 acres, be the same more or less; and the said William Witten doth covenant and warrant a general title to the above-conveyed land.

In testimony whereof the said William Witten h*a*ve hereunto set his hand and affixed his seal the day and year above written.

WILLIAM WITTEN. [SEAL.]

VIRGINIA, *Mercer County*, } *To wit:*

I, John G. Kerr, a justice of the peace for the county aforesaid, in the State of Virginia, do certify that William Witten, whose name is *a*ssigned to the foregoing deed, bearing date on the 25th day of September, 1852, has acknowledged the same before me in *our* county aforesaid. He, the said William Witten, acknowledged the same to be his act, and decla*i*red that he had willingly executed the same and does not wish to retract it.

Given under my hand this 16th day of December, 1852.

JOHN G. KERR, *J. P.*

257 In Mercer County Court. December Term, 1852.

A deed of bargain and sale from William Witten to William H. Witten, conveying land, with a certificate of acknowledgement before a justice annexed, was presented in court — ordered to be recorded.

Teste: WM. F. HEPTINSTALL, *D. C.*

WEST VIRGINIA, *Mercer County*, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 1st day of May, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee for copy & search, 85c., ch'g'd to Jos. I. Doran.

258 Exhibit "Deed Book No. 4, p. 373," filed with the deposition of S. P. Pearis, is in the words and figures following, to wit:

This deed, made this 13th day of Feb-uary, 1857, between Chrispianos Belcher & Rebecca Belcher, his wife, of the first part, and Obediah Belcher, of the second part, witnesseth: That in consideration of the sum of one hundred and thirty-five dollars in hand paid

by the said Obediah Belcher the said Chrispianos and Rebecca Belcher, his wife, doth grant unto the said Obediah Belcher and *their* heirs a certain tract or parcel of land lying in the county of Mercer & State of Virginia, containing 200 *hundred* acres, more or less, being the land conveyed by James Hector to Obediah Belcher and by Obediah Belcher to the said Chrispianos Belcher, which deed is of
259 record in the clerk's office of the county court of Mercer county, which land is bounded as follows, viz: Beginning on the left-hand fork of Simmons creek, thence running with the creek to Obediah Belcher's line; thence crossing the ridge to the right-hand fork of the branch; thence running down the branch to Robert Belcher's line; thence crossing the ridge with Robert Belcher's line to the beginning; and the said Chrispianos Belcher, & Rebecca, his wife, covenants that he will warrant generally the land hereby conveyed, with all its appurtenances.

Witnesseth our hands and seals the day and year above written.

CHRISPIANOS BELCHER. [SEAL.]

VA., *Mercer County,* } *To wit:*

This day Chrispianos Belcher, party to the annexed deed dated the 13th day of February 1857, came personally before me, a justice of the peace in said county, and acknowledged the same to be his act and deed, and directed me to certify his acknowledgement to the clerk of the county court of Mercer county that the deed may be recorded.

Given under my hand & seal this 15th day of February, 1857.

COUNCIL WALKER, *J. P.* [SEAL.]

VIRGINIA:

In the clerk's office of Mercer county court the 14th day of February, 1857, a deed of bargain and sale from Chrispianos Belcher to Obediah Belcher, conveying land, with a certificate of acknowledgement before a justice annexed, was this day presented in said office & admitted to record.

Teste: W. F. HEPTINSTALL, *D. C.*

WEST VIRGINIA, *Mercer County,* } *To wit:*

260 I, Sam'l P. Pearis, clerk of the county court of Mercer county, do certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 1st day of May, 1886.

SAM'L P. PEARIS, *Clerk.*

Sch. & co., 75c., ch'g'd to Jos. I. Doran.

Exhibit "D. B. 4, page 339," filed with the deposition of S. P. Pearis, is in the words and figures following, to wit:

This deed, made the 12th day of Aprile, 1856, between Chrispianos

Belcher and Rebecca, his wife, of the one part, and Henry Walker, of the other, witnesseth:

That, in consideration of the sum of $400 to them in hand paid, s'd Belcher and wife do grant unto said Walker a certain tract of land lying in the county of Mercer on a ridge between Simmons and Flipping creeks, containing six hundred and forty acres, be the same more or less, and bounded as followeth: Beginning at the mouth of the Spruce Pine branch on Flipping creek at a spruce pine, maple, and buckeye, thence south 30 W. 84 poles to 2 buckeyes, S. 52 poles to a ches-nut, buckeye, and chestnut oak, S. 45 W. 94 poles to a chestnut oak and 2 buckeyes, S. 70 W. 68 poles to 2 white oaks and poplar by a path, S. 80 W. 32 poles to a gum and white oak, S. 30 W. 200 poles down the Doe branch to Simmons creek and up said creek to the fork and up the left-hand fork to 2 burch trees on the deviding line between Obediah & Robert Belcher and with the same to Flipping creek and down the same to the begin-ing.

Witness our hands and seals the date above written.

his
CHRISPIANOS x BELCHER. [SEAL.]
mark.

her
REBECCA x BELCHER. [SEAL.]
mark.

MERCER COUNTY, *To wit:*

261 We, G. P. Brown & Eli Bailey, justices of the peace for said county and State of Virginia, do hereby certify that Chrispianos Belcher and Rebecca, his wife, parties to the within deed, personally appeared before us in our county and acknowledged the same to be there act and deed and desired us to certify the acknowledgement to the clerk of the county court of Mercer county in order that the said deed may be recorded; and the said Rebecca Belcher being examined by us separately and apart from her husband and having the deed fully explained to her, she acknowledged the same to be her act and deed.

Given under our hands and seals the 20th day of May, 1856.

GEO. P. BROWN, *J. P.* [SEAL.]
ELI BAILEY, *J. P.*

VIRGINIA:

In the clerk's office of Mercer county court the 20th day of November, 1856, a deed of bargain and sale from Chrispianos Belcher & wife to Henry Walker, conveying land, with a certificate of acknowledgement and privy examination before two justices annexed, was this day presented in said office and admitted to record.

Teste: W. F. HEPTINSTALL, *D. C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do

hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 1st day of May, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee for copy & sch., 75c., ch'g. to Jos. I. Doran.

(Exhibit "D. B. No. 2, page 211," filed with the deposition of S. P. Pearis, is in the words and figures following, to wit:)

This indenture, made this 11th day of May, 1842, between
262 James Hector, of the one part, an- Robert Belcher, of the other part, both of Mercer county, Virginia, witnesseth: That for and in consideration of the sum of one hundred dollars, payable in bonds due in one, two, and three years from the 24th day of February, 1842, in hand given to said Hector by said Belcher (the receipt whereof is hereby acknowledged), the said Hector hath this day sold and by these presents doth bargain and sell unto the said Robert Belcher and his heirs forever a certain boundary or tract of land supposed to contain about fifteen hundred acres, be the same more or less, being part of a tract of 500,000 acres surveyed in 1794 and granted to Gov. Wilson Cary Nicholas and duly conveyed to said Hector, as by reference to the court books of Tazewell county, Va., may be seen, and bounded as follows: "S. C." Beginning at a white oak and hickory at the mouth of Laurel creek, corner to said Nicholas survey, thence with a line thereof S. 74° E. 765 poles, crossing Bluestone river, to three buckeyes in the Pinnacle Gap corner thereof; thence N. 60° W. 480 poles (passing a double sugar poplar & maple on the point of a ridge near the river at 320 poles, crossing Bluestone river at 340 poles, and passing an ash, poplar, white oak, maple, and two Spanish oaks on the north bank thereof, above a mill seat) to a poplar, ches-nut, cucumber, dogwood, and three chestnut oaks on the east side of a knoll near John Coleman's field; thence N. 60° E. 289 poles (crossing Bell's branch at 132 poles & passing a maple, white oak, and dogwood in a southwest hollow at 160 poles, to the bank of Phlippings creek; thence up and binding thereon about 240 poles to the mouth of the Spruce Pine branch; thence S. 60 W. 160 poles, crossing the road on Phlippings ridge, to a white oak marked A. W.; thence S. 60 W. 216 poles, crossing Simmons ridge, to a black oak marked A. W.; thence S. 60 W. 290 poles to four white oaks and two chestnuts on a high ridge
263 (one marked A. W.); thence S. 60 W. about 40 poles to a stake on the original line of said W. C. Nicholas survey; thence with a line thereof S. 34° E. about 240 poles, crossing Bluestone river twice, to the beginning; to have and to hold the said tract or parcel of land to the said Robert Belcher and his heirs forever, with all its appurtenances, free of all claim or claims and incumbrances from said Hector and his heirs and of all other persons whomsoever, to the said Robert Belcher and his heirs forever.

In witness whereof the said Hector hath set his hand and seal — day and date as before mentioned.

JAMES HECTOR. [SEAL.]

Signed, sealed, and delivered in presence of—
C. H. A. WALKER.
CHRISPIANOS BELCHER.
JOHN BELCHER.

Mercer County Court Clerk's Office.

This deed from James Hector to Robert Belcher was proved before me by the oath of Chrispianos Belcher on the 1st of October, 1845, and by the oath of Chrispianos Walker on the 9th February, 1846, both subscribing witnesses thereto, and admitted to record.
Teste: C. W. CALFEE, *C.*

WEST VIRGINIA, *County of Mercer,* } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.
Given under my hand this 1st day of May, 1886.
SAM'L P. PEARIS, *Clerk.*
Fee cop. & sch., 85c.

264 (The deposition of William Miller, filed in this cause on the 20th day of May, 1886, is in the words and figures following, to wit:)

The deposition of William Miller & another, taken before me, H. C. Lewis, a notary public in and for the county of Montgomery, State of Missouri, on the 15th day of April, 1886, at the law office of A. O. Sanders, in Montgomery City, in the said county of Montgomery and State of Missouri, pursuant to notice filed herewith, to be read as evidence in behalf of complainant in a certain suit in equity now pending in the district court of the United States in and for the district of West Virginia, sitting with circuit court powers at Charleston, in said district, wherein Joseph I. Doran is complainant and The Simmons Creek Coal Company and others are defendants.

Present: A. O. Sanders and S. D. May, attorneys for compl't; A. W. Reynolds, attorney for defendants.

WILLIAM MILLER, a witness of lawful age, being duly sworn, deposes and says:

Ques. 1. Please state your age and where you reside.
Ans. My age is 67 years; I reside in Mercer county, State of Missouri.
Ques. 2. Did you ever reside in Mercer county, State of West Virginia; if so, when and how long?
Ans. Yes; from the year 1843 until about eight years ago, except about two years, when I lived in Tazewell county, Virginia.
Ques. 3. Were you acquainted with the defendants, Chrispianos

Belcher, George W. Belcher, Robert D. Belcher, and Obediah
265 Belcher?

Ans. Yes; I was acquainted with all of them, well.

Ques. 4. Are you related to said defendants or either of them?

Ans. I am brother-in-law to Chrispianos and George W. Belcher. Robert D. Belcher is uncle to my wife, and Obediah Belcher was my wife's father.

Ques. 5. Please examine deed made by said Robert D. Belcher and wife to William H. Witten, bearing date December 23rd, 1852, conveying 200 acres, more or less, of land in Mercer county, West Virginia, on Simmons creek, waters of Bluestone, and state whether or not you are the same Miller mentioned in said deed.

Ans. Yes; I am the same man.

Ques. 6. Please state what tract or tracts of land, if any, you owned or claimed to own at the date of said deed adjoining or adjacent to the tract of land conveyed to said Witten by said deed, filed with complainant's bill, marked "A No. 1," and from whom you purchased the same.

Ans. I claimed to own six hundred acres, which I purchased from Obediah Belcher, lying between Flipping creek and the main Simmons creek. When I bought this land the six hundred acres embraced what is now known as the Henry Sadler land. I had a title bond for this land from Obediah Belcher. This title bond was afterwards destroyed or lost during the war. I also owned one hundred acres, which I purchased from Obediah Belcher and Chrispianos Belcher, lying at the head of the west fork of Simmons creek and north of the said Witten land.

Ques. 7. Please state to whom you sold said lands or what disposition you made of the same.

266 Ans. My father-in-law, Obediah Belcher, cut me short on the 600-acre tract by afterwards selling the Sadler land off the six hundred acres. George W. Belcher got a deed or deeds from Chrispianos Belcher to his wife to three hundred acres, part of said six hundred acres, and also to the one-hundred-acre tract hereinbefore mentioned. As soon as I found it out I went forthwith and brought suit against George W. Belcher and Mary Belcher, his wife, for the land. The suit was in court for about two years. I had employed French and Munsey as my attorneys to bring this suit. I took the deposition of Robert D. Belcher. After taking the deposition George W. Belcher's attorney, David E. Johnston, advised George W. Belcher to compromise, and I compromised said suit by George W. Belcher giving me a roan horse and I giving him up the said land—both tracts.

Ques. 8. When did Chrispianos Belcher convey said three hundred acres (part of said six hundred acres) and the said one-hundred-acre tract? And file copies of said conveyances

Ans. In the year 1873, and I file herewith copies of said deeds—one for three-hundred-acre tract, marked D. B. No. 7, page 433, and one for the one-hundred-acre tract, marked D. B. No. 8, page 177.

Ques. 9. Please examine map of the lands on waters of Simmons and Flipping creeks, made from old deeds, marked property of

Joseph I. Doran *et al.*, and file the same with your deposition and point out on said map the west and north lines of your said six-hundred-acre purchase from Obediah Belcher and the south line of said one-hundred-acre tract.

267 Ans. I have no noted place to tell you. The west line ran up to Obediah Belcher's Home place, on the middle fork of Simmons creek, commencing at the two birches on the main creek. The north line was the marked line between my six-hundred-acre tract and Obediah Belcher's Home tract. The south line of my hundred-acre tract ran from the six chestnuts to Simmons creek, to Payne's line or Payne's corner.

Ques. 10. Was or was not main Simmons creek the recognized or division line between your said six-hundred-acre purchase and the said two-hundred-acre tract conveyed to the said Witten by the said Robert D. Belcher & wife in the year 1852?

The foregoing question and any answer thereto are excepted to by counsel for defendant, Simmons Creek Coal Company, because incompetent.

Ans. Yes.

Ques. 11. Was or was not your said one hundred acres on the west fork of Simmons creek known and called (about the year 1852) Miller's survey?

Ans. Yes.

Ques. 12. Was or was not said one hundred acres known and called as Miller's survey north of said Witten's two-hundred tract, and was or was not the south line of said survey the north line of said Witten land?

The foregoing question is excepted to by defendant's attorney because it is leading and because the deeds are the best evidence.

Ans. Yes; Witten's land lay south of and adjoining Miller's survey.

268 Ques. 13. From whom did Obediah Belcher purchase the said two tracts he sold you or under who- did he claim?

Ans. Chrispianos Belcher.

Exception.—The foregoing deposition is excepted to by counsel for Simmons Creek Coal Co. because each question and answer thereof is incompetent, immaterial, and irrelevant to any issue in the cause so far as said defendant, Simmons Creek Coal Co., is concerned.

Without waiving the benefit of the above exception, the defendant, Simmons Creek Coal Co., by its counsel, propounds the following questions on cross-examination:

Question No. 1. How long has it been since you were in Mercer county, West Virginia?

Ans. Eight years last Christmas.

Question No. 2 by same. Mr. Miller, you never had any title bond for the six-hundred-acre tract you refer to recorded, did you; and you never had any deed for same, did you?

Ans. I never had the title bond recorded, and I never had any deed for or to the land.

Question No. 3 by same. Obediah Belcher claimed that he did not sell you what is now known as the Henry Sadler land, did he not?

Ans. Yes; after he got a chance to sell it, he did, and I would not have had a racket with him for the whole six hundred acres.

269 Question No. 4 by same. Then if Obediah Belcher was right about what he claimed, the west line of your tract was on the east fork of Simmons creek, east of the Sadler tract, which lies between the east fork of Simmons creek and the land in controversy in this suit, was it not?

Ans. Yes; if — was right this would have been the case; but if he sold me to Simmons creek he could not have thought rightly, that that little branch was Simmons creek.

Question No. 5 by same. Did you have a deed for the 100-acre tract you refer to, which is now known as the A. G. Belcher tract?

Ans. No; I had no deed to it. I had a little bond jointly from Obediah Belcher and Chrispianos Belcher for it.

Question No. 6 by same. Did you ever have this title bond recorded?

Ans. No, sir.

Question No. 7 by same. Where is that last-mentioned title bond?

Ans. It was lost or destroyed with the other papers.

Question No. 8 by same. If the complainant could recover in this suit you think you could recover the said one-hundred-acre tract, do you not?

Complainant's att'y objects to this question as being incompetent and immaterial to this suit, and the witness has already stated that he has compromised and abandoned his claim to this land by the acceptance of a horse.

Ans. I don't see *I* how I could.

Question No. 9 by same. Did you not say to complainant's counsel a little while ago that you thought you could recover it by bringing suit?

270 Objected to for reason given above.

Ans. If I did, it has slipped my memory. I did say if I was a mind to I could fix to recover half of both of said tracts of one hundred acres and of three hundred acres.

Question No. 10 by same. You had a good amount of ill-feeling toward George W. Belcher, did you not, about the time you say you had the suit with him?

Ans. Well, not enough to say anything about. It is true I did not think he was doing right. I can put up with a great deal from a man.

Question No. 11 by same. Was there not witnesses produced in court in Mercer county, West Virginia, on one occasion to invalidate your testimony?

Objected to because time — place are not stated and the suit not mentioned or the names of parties thereto.

Ans. No; not that I ever heard of.

The foregoing question is also objected — because, if true, — would prove nothing.

And further this deponent saith not.

his
WM. x MILLER.
mark.

Attest: H. C. LEWIS.

(Here follows map marked p. 270.)

271 S. W. HAMMACK, a witness of lawful age, being duly sworn, deposes — says:

Ques. 1. Please state where you reside.

Ans. I reside at Middletown, in Montgomery county and State of Missouri; have resided there thirty years; am sixty-one years of age.

Ques. 2. Please state if you are acquainted with the defendant, Chrispianos Belcher, and, if so, how long you have known him.

Ans. I am; have known him about twenty years. I live about three miles from where he now lives. He formerly lived about five miles from Middletown, where I now live, but within three or four years has lived within three miles.

Ques. 3. Please state if you are the same S. W. Hammack, a notary public for said county, who took and certified the acknowledgement of said Chrispianos Belcher to a deed bearing date the 18th day of October, 1884, conveying to George W. Belcher seventy-five acres, more or less, of land lying in Mercer county, West Virginia, on the waters of Simmons creek, a branch of Bluestone river.

Ans. Yes; I am. I do not remember the exact date of taking the acknowledgement, but I took his acknowledgement to such a deed last fall a year ago.

Ques. 4. Please state what conversation, if any, the said Chrispianos Belcher had with you before or at the time he executed said deed as to what lands he owned in Mercer county or intended to convey to said George W. Belcher.

Exception.—The foregoing question and any answer that may be given thereto are excepted to by counsel for the defendant,
272 Simmons Creek Coal Company, because they are immaterial and irrelevant so far as it is concerned.

Ans. A short time prior to the execution of this deed by Mr. Chrispianos Belcher he informed me that he expected he would have to make a deed to his brother George to a small piece of land in West Virginia, where he came from. He said at the time he had written to his brother that if he would send him some money he would make him a deed to the land. Shortly after that he came to me with a deed prepared ready for acknowledgement. He told me it was

a small piece of land lying in the forks of a creek or two creeks, a three-cornered piece, containing, as he thought, about thirty or forty acres; said he did not know what George wanted with it, as he did not think it was worth anything, but he had understood there was a railroad coming very near to it, and there was coal in that country, and that he thought that was the reason his brother George wanted it.

Ques. 5. Please state if you had any conversation with said Chrispianos Belcher before or at the time he executed the deed, of date April 2nd, 1885, conveying a tract or boundary of land, two hundred acres, more or less, on Simmons creek, in Mercer county, West Virginia, to complainant, Joseph I. Doran; and, if so, state what land he then claimed; that he understood and intended to convey to said George W. Belcher by said deed of date October 18th, 1884.

Exception.—The foregoing question and any answer that may be given thereto are excepted to by attorney for defendant Simmons Creek Coal Company, because the same are immaterial and
273 irrelevant to any issue in the cause so far as it is concerned.

Ans. At that time, April 2nd, 1885, he stated that he thought when he left Virginia (I think in 1857) that he had conveyed all the land he owned there except this three-cornered piece in the forks of the creek. He said that if the deed he was then ready to execute to Joseph I. Doran interfered with the deed he had made to George W. Belcher, to the land in the forks of the creek, he would not sign it. Mr. May, who was then present, *and* said to him that it would not interfere with it, and he then signed and acknowledged it.

Ques. 6. Please examine map of lands on the waters of Simmons and Flipping creeks made from old deeds, marked property of Joseph I. Doran and others, and file same with your deposition and point out on said map the land said Chrispianos Belcher before and at the time he executed the deed to Joseph I. Doran stated and claimed that he owned in Mercer county, West Virginia, and that he meant and intended to convey to said George W. Belcher by his said deed of date October 18th, 1884.

Exception.—The foregoing question and any answer that may be given thereto are excepted to by counsel for defendant, Simmons Creek Coal Company, because they are irrelevant and immaterial so far as it is concerned, and for other reason to be assigned at bar.

Ans. At the time of making or executing the deed to Joseph I. Doran, on the 2nd day of April, 1885, there was produced a map similar to the one here produced and which represented the land shown on this map as lying between the middle fork and the
273½ west fork of Simmons creek, in a triangular form, which piece of land he pointed out as the land he had sold to George W. Belcher in October, 1884.

Ques. 7. Please point out on said map what land was shown to Chrispianos Belcher and understood, meant, and intended by him as being the land he was conveying to complainant Doran by said

deed of date April 2nd, 1885, before and at the time he executed the same.

Exception.—(The foregoing question and any answer that may be given thereto are excepted to by attorney for the defendant, Simmons Creek Coal Company, because they are immaterial and irrelevant as to it, and for other reasons to be assigned at bar.)

Ans. My understanding was that he was shown the land commencing on this map at the point marked two birches and run up Simmons creek to the southeast corner of the Mary E. Belcher one-hundred-acre tract, marked on the map we then had as "Miller's survey;" thence westerly to a point marked "six chestnuts;" thence southerly to a point marked "double and single poplars;" thence easterly to the "two birches."

Quest. 8. Please point out on said map what lands were shown said Chrispianos Belcher as the land actually mentioned and conveyed to said George W. Belcher by the said deed of date October 18th, 1884, before and at the time he executed said deed to complainant, and the number of acres the said C. Belcher was informed that the same actually contained.

Ans. He was then and there told that this deed called for
274 seventy-five acres. He remarked that if there was that much land it was more than he thought there was, as he had supposed there was from thirty-five to forty acres. He was told before executing the deed that it contained actually one hundred and eighty acres, and that the line was a straight line from the "two birches" to the "six chestnuts," and that the deed called to run with Witten's line. He, Chrispianos Belcher, said that he had already sold all that land in there and did not claim to own any of that west of Simmons creek, and that if this deed conflicted in any way with the thirty or forty acres in the forks of the creek which he had sold to George Belcher he would not sign it.

Exception.—The foregoing question and answer are excepted to by counsel for Simmons Creek Coal Co. because irrelevant and immaterial so far as it is concerned.

Ques. 9. Please file with your deposition the copy or abstract of deed from Robert D. Belcher and wife to W. H. Witten, of date Dec. 23, 1852, conveying two hundred acres, more or less, of land on Simmons creek; also the copy or abstract of deed from said Robert D. Belcher and wife to Chrispianos Belcher and wife, of same date, conveying eleven hundred acres adjoining the former tract, that was shown and read to said Chrispianos Belcher before or at the time the said Chrispianos Belcher executed the said deed to complainant Doran, of date April 2nd, 1885.

Ans. I identify the papers marked Exhibit S. W. Hammack by my own signature, which I wrote on the 2nd day of April, 1885, there being two copies or abstracts on the same sheet of paper.

Cross-examination:

275 Question No. 1 by att'y for Simmons Creek Coal Co. I believe you stated that Chrispianos Belcher has lived in Montgomery county, Missouri, ever since the year 1857. Am I right?

Ans. No; when he first moved from Virginia he went to Southwest Missouri, but has been living in Montgomery county since 1862.

Question No. 2 by same. At the time said Chrispianos Belcher executed the deed dated April 2nd, 1885, to complainant, Joseph I. Doran, he did not seem to have much recollection as to what lands he had conveyed in Virginia (now West Virginia) before he left there, in 1857, did he?

Ans. No, sir; he did not have much recollection of it. He said he had not charged his mind with it.

Question No. 3 by same. The statements he made on that occasion to you were made by him after explanations made to him by Mr. May, who was then attorney for the complainant, were they not?

Ans. Yes; he did not seem to have much recollection of what land he had conveyed, but stated that he thought he had conveyed all the land he had owned except that tract in the forks of the creek. May went on to show him and tell him that the tract of land contained 180 acres, most of it lying west of the creek; then Belcher said he did not claim to own any land west of the creek; that he had sold all the land except that piece in the forks of the creek before he had left West Virginia.

Question No. 4 by same. Mr. May did not tell Mr. Belcher
276 that he was conveying three hundred and eighty-two acres by the deed of April 2nd, 1885, to the complainant, Joseph I. Doran, did he?

Ans. I don't think he did. If he did I don't remember it.

Question No. 5 by same. Mr. May furnished the map you refer to which was used on that occasion and explained it to Chrispianos Belcher, did he not?

Ans. He did.

Question No. 6 by same. Mr. Belcher, then, did not know anything about said map as to accuracy, &c., except what Mr. May told him, did he?

Ans. No more than he seemed to know and understand the forks of the creek and the location of that part of the land, but what he said was vague and indefinite. He said he had been from there so long he could not remember things distinctly.

Question No. 7 by same. The counsel for complainant has not used the same map in your examination-in-chief which he used on the occasion when Chrispianos Belcher executed the said deed to complainant, Joseph I. Doran, has he?

Ans. No; this is not same one.

Question No. 8 by same. Did I not ask him to let me look at the map he used on that occasion, and did he not refuse to let me see it?

Objected to by complainant's attorney because the defendants have not called for the same in a legal mode. The map will be shown when called for by them in proper way.

Ans. Yes.

277 Question No. 9 by same. Did not said Chrispianos Belcher say when the extract from the deed which is herewith filed as part of your evidence-in-chief, conveying the eleven hundred acres to Wm. H. Witten, that said deed was a bogus deed?

Ans. He stated that some deed was a bogus deed, but I am not sure which deed it was. He further stated that he did remember about making a certain deed after his attention had been called to the certified abstract of the title, and then he made the remark that it had been so long that these things had escaped his memory.

Question No. 10 by same. Did you not tell me to-day that he said the deed to Witten for the eleven hundred acres was a bogus deed until he saw the certificate of acknowledgement?

Ans. I don't know that the Witten deed was the particular one. He stated that he had made several deeds. I am not able to say that this was the particular deed.

Question No. 11 by same. Then you say you did not make such statement to me, do you?

Ans. I think not. If I did, I did not intend to convey that idea.

Question No. 12 by same. How is it that you recollect so distinctly things that occurred there which is in favor of complainant and do not remember what is in favor of defendants?

Ans. There were very few things there that engaged my attention particularly, and this one thing of a piece of land that

278 he said he had conveyed to his brother George was the matter principally talked of there between Chrispianos Belcher and myself. My attention was called to this from the fact that he had so recently made a deed to that particular piece of land, at the time of making of which he told me how it laid and all about it, and then repeating this thing on the 2nd day of April, when he made this other deed, and, it being a very simple matter to understand the form of the land and its location, caused me to remember it more distinctly than I did the others, because there seemed to be more complication about the others.

Question No. 13 by same. Is it an easy matter to understand the form and location of land which lies eight hundred miles from where you had that conversation, when you never saw it, from a statement *viva voce* and a map which you know nothing about?

Ans. Yes, sir; it is. In the first place, Chrispianos Belcher told me the shape of the land he sold to George Belcher; that it was a three-cornered piece lying in the forks of the creek, coming down to a point in the forks of the creek. Then, being a practical surveyor, I can readily determine the boundaries of a piece of land reported to me as lying in certain form, containing a certain area, with lines bounded by a certain scale of distances.

Question No. 14 by same. Then that is the way you arrive at your conclusions about the conversations detailed by you, is it?

Ans. No; not precisely. I arrive at this mainly from the
279 representations of Belcher, by his pointing out on that map the two creeks, Simmons creek showing the land itself and the form of it indicating precisely such a piece of land as Chrispianos Belcher told me that he had conveyed to his brother George.

Question No. 15 by same. Is Chrispianos Belcher an educated man?

Ans. No, sir; not what we would term an educated man. I think he can read slightly and sign his name, and I think he can read writing a little.

Question No. 16 by same. Now, is — not a matter of fact the reason you remember things so distinctly you were called on then, at the time the deed from said Chrispianos Belcher to complainant, Joseph I. Doran, was executed, on the 2nd day of April, 1885, to be a witness on behalf of complainant in this suit?

Ans. No, sir. I was never informed nor was it intimated to me that I was to be a witness in this suit. Only until recently—probably a month or six weeks ago—I was informed that my deposition was to be taken on the other side, and not until two days ago did I know that my deposition was to be taken by the complainant.

Question No. 17 by same. Why was it, then, that you signed your name on the copies of deeds filed with your deposition at that time?

Ans. Simply because Mr. May requested me to do so. I never expected to be called upon as a witness, and I merely done it without thought as to the object of having my name there.

280 Question No. 18 by same. Are you in the habit of charging your memory with other people's business matters and conversations you have had with them in regard to same?

Ans. Yes, sir; particularly where there — any controversy or dispute; where it is plain transaction I am not.

Re-examination by complainant's att'y:

Ques. 1. Did not complainant's att'y offer to produce the map referred to as shown Chrispianos Belcher on April 2nd, 1885, if called for to be filed as part of this deposition?

Ans. Yes, sir; that is what I understood him.

Ques. 2. Please examine the map which I now hand you and state if it is not the map shown said Belcher at the time mentioned, and file same with your deposition.

Ans. Yes; it is. I know it by its general appearance and by my name being endorsed on it, being my own signature, and file the same with my deposition, marked S. W. Hammack.

Ques. 3. Did you read the deed made by Chrispianos Belcher to George W. Belcher of date October 18th, 1884, at the time he acknowledged the same?

Ans. I did not. The deed was already written and brought to me for acknowledgement.

Ques. —. Are you not the surveyor of Montgomery county, Mo.?

Ans. I am. Am serving my third term of four years each.

SENECA W. HAMMACK.

STATE OF MISSOURI, } ss:
County of Montgomery, }

281 I, H. C. Lewis, notary public in and for the county of Montgomery, State of Missouri, do hereby certify that the foregoing depositions of William Miller and Seneca W. Hammack were duly taken, sworn to, and subscribed before me at the time and place mentioned in the caption.

Given under my hand and seal of office this the 16th day of April, 1886. My term of office expires April 5th, 1890.

H. C. LEWIS,
Notary Public.

Bill of Fees and Costs.

H. C. Lewis, notary fees:

To writing 4,500 words and figures of testimony, at 15c. per 100	$6 75
Swearing two witnesses, 5c. each	10
Certificate and seal to depositions	50
Postage	16
	$7 51

Paid by A. S. & S. D. May, att'ys for complainant.

Witness fees:

William Miller, witness, travelling 456 miles, at 5c.	$22 80
Attendance, 4 days, at 50c.	2 00
	$24 80

P'd by A. S. & S. D. May, att'ys for complainant.

S. W. Hammack, witness, mileage, 24 miles, at 5c. per mile	$1 20
Attendance, 2 days, at 50c. per day	1 00
	$2 20

P'd by A. S. & S. D. May, att'ys for complainant.

Notice.

In the District Court of the United States in and for the district of West Virginia, Sitting at Charleston, in the said District.

JOSEPH I. DORAN
vs.
SIMMONS CREEK COAL CO. and Others. } In Equity.

To the defendants and each of them in the above-entitled suit:

Take notice that on the 30th day of March, 1886, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the store-house
282 of "The Southwest Virginia Improvement Company," in the town of Pocahontas, in the county of Tazewell and State of Virginia, I, Joseph I. Doran, plaintiff in the above-entitled suit, will commence taking the depositions of W. H. Witten, W. Scott

Witten, Henry Sadler, William Taylor, Sampson Taylor, George Hodge, Henry D. Belcher, James Calfee, William Payne, Jordon Nelson, W. L. Graham, James O'Keefe, William Ingles, J. W. S. Potts, and others, to be read as evidence in my behalf at the hearing of a suit in equity now pending and undetermined in the district court of the United States in and for the district of West Virginia, sitting with circuit court powers at Charleston, in said district, wherein I am plaintiff as aforesaid and the said Simmons Creek Coal Company, a corporation organized and doing business in the State and district of West Virginia under the laws of said State, and others, are defendants; and if said depositions are not commenced, or, if commenced, are not completed, on that day, the taking thereof will be continued from day to day (Sundays excepted) and from time to time at the place and between the hours above stated until they are completed.

And you and each of you will further take notice that on the 15th day of April, 1886, between the hours of 8 o'clock a. m. and 8 o'clock p. m., at the law office of A. O. Sanders, in Montgomery City, in the county of Montgomery and State of Missouri, I will commence taking the depositions of Seneca W. Hammack, William Miller, and Chrispianos Belcher, to be read as evidence in my behalf at the hearing of the said suit in equity above mentioned; and if said depositions are not completed on that day the taking thereof will be continued from day to day (Sundays excepted) and from time to time at the place and between the hours above stated until they are completed.

Dated this 18th day of March, 1886.

283 JOSEPH I. DORAN, *Plaintiff*,
By JAMES H. FERGUSON,
His Counsel and Attorney.

(The following endorsement of acceptance of service of the foregoing notice is in the words and figures following, to wit:)

I accept service of the within notice to take depositions for all the defendants in the suit therein mentioned who have been served with process in the case.

WM. A. QUARRIER, *For D'f'ts.*

(Exhibit "D. B. No. 8, page 177," filed with deposition of William Miller, is in the words and figures following, to wit:)

This deed, made this 18th day of September, 1873, between Chrispianos Belcher & wife, of the county of Montgomery, State of Mo., of the first part, and Mary E. Belcher, of the second part, witnesseth: That the said parties of the first part, for and in consideration of 10 dollars, the receipt of which is hereby acknowledged before the signing and sealing of this deed, do sell, grant, and convey in fee simple unto Mary E. Belcher one hundred acres of land lying on the dividing ridge of Bluestone river & Elkhorn, in the county of Mercer and State of W. Va., and bounded as follows: Beginning at the W. C. Nicholas survey line, N. 10 E. about 60 poles to 2 red oaks,

&c., 2 white oaks, corner to William Witten & —— Graham's 150 acres, S. 50 E. 18 poles to 2 hickories, &c., 2 white oaks, corner to said Witten & Graham, and with a line thereof down the left-hand fork of Simmons creek about 130 poles to 2 pines and white oak, corner of said Witten & Graham; leaving said line, S. 50 W. 112 poles to four chestnuts *fon* a ridge, N. 30 W. about 170 poles to the
284 beginning; and the said parties of the first part do hereby covenant with the party of the second part that they will warrant and defend the property hereby conveyed from them and their heirs forever, with all its appurtenances.

Witness the following signatures & seals.

his
CHRISPIANOS x BELCHER.
mark.

her
REBECCA x BELCHER.
mark.

Attest: JOHN W. JAMES.

STATE OF MISSOURI, }
County of Montgomery, } *ss:*

Be it remembered that Chrispianos Belcher and his wife, Rebecca Belcher, who are personally known to the undersigned, notary public, duly commissioned and qualified, within *within* and for said county, to be the persons whose names are subscribed to the within or foregoing deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained; and the said Rebecca Belcher, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquishes her right of dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Given under my hand and official seal the 10th day of September, 1873.

[SEAL.] JOHN W. JAMES,
Notary Public.

WEST VIRGINIA:

In Mercer County Court Clerk's Office.

FEBRUARY 5TH, 1877.

A deed of bargain and sale from Chrispianos Belcher & wife to Mary E. Belcher, conveying land lying in said county, was this day presented in the said office and, together with the
285 certificate of acknowledgement and privy examination thereon endorsed, duly admitted to record.

Teste: B. G. McNUTT, *Clerk.*

WEST VIRGINIA, }
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do

hereby certify that the foregoing writing is a true copy from the records of my office.

Given under my hand this 8th day of April, 1886.

SAM'L P. PEARIS, *Clerk.*

Fee for copy, 65c., chg. to Jos. I. Doran.

(Exhibit marked "S. W. Hammack," filed with the deposition of said S. W. Hammack, is in the words and figures following, to wit:)

This indenture, made this 23rd day of December, 1852, between Robert D. Belcher, of ——, and Rebecca, his wife, of the one part, and William H. Witten, of the other part, both of the county of Mercer and State of Virginia, witnesseth: That, in consideration of the sum of one hundred and twenty-five dollars paid to the said R. D. Belcher by the said William H. Witten, the said R. D. Belcher doth grant unto the said William H. Witten, his heirs, &c., all that tract of land, containing by estimation two hundred acres, be the same more or less, lying in Mercer county, on Simmons creek, waters of Bluestone, and — as follows, to wit: "Beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up said creek with Miller's line S. 55° W. 120 poles to six chestnuts, corner to Miller's survey, and with the same S. 35° E. 310 poles to a do-ble and single popular, corner to said Belcher, and with the same N. 40 E. 250 poles to the beginning;" and the said Robert D. Belcher and Rebecca, his wife, do*th*, for themselves and their -eirs,
286 hereby covenant and warrant a general title to the above-conveyed land.

Witness the following signatures and seals.

ROBERT D. BELCHER. [SEAL.]

her

REBECCA x BELCHER. [SEAL.]

mark.

1853, May 7th.—Acknowledged before Justices George P. Brown and Eli Bailey. Deed Book No. 3, page 322.

1853, June term, co. c't.

(Abstract from deed of R. D. Belcher & wife & Chrispianos Belcher & wife to Wm. H. Witten, deed for 1,100 acres of land, marked "S. W. Hammack" and filed with said Hammack's deposition, is in the words and figures following, to wit:)

Robert D. Belcher and Rebecca, his wife; Chrispianos Belcher & Rebecca, his wife, to William H. Witten. Deed to 1,100 —; consideration, $35.00.

"Beginning at the north of Laurel, a branch of Bluestone, thence north 27 W. in the line of the Wilson Cary Nicholas 500,000-acre survey, and with the same about 640 poles to 2 birches; thence continue on the said line 280 poles to a doub-e birch on said line; thence, leaving said line, north 55 E. 294 poles to six chestnuts; thence south 35 east 940 poles to the beginning."

1853, May 7th.—Acknowledged by Robert D. Belcher & Chrispianos —— before Justice George P. Brown, and by their wives before Justices George P. Brown & Eli Bailey.

287 (Exhibit "D. B. No. 7, page 433," filed with the deposition of Wm. Miller, is in the words and figures following, to wit:)

This deed, made this the 10th day of September, A. D. 1873, between Chrispianos Belcher & wife, of the county of Montgomery, State of Mo., of the first part, and Mary E. Belcher, of Mercer Co., W. Va., of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of 50 dollars, the receipt of which is hereby acknowledged before the signing and sealing of this deed, do sell, grant, and convey in fee simple unto Mary E. Belcher 300, three hundred, acres of land lying on Philipans ridge and waters of Bluestone, in the county of Mercer, State of W. Va., and bounded as follows, to wit: Beginning at two pines and a poplar on the west fork of Philipans creek, N. 58 W. 80 poles to a chestnut and white oak, S. 78 W. 25 poles to a large white oak, S. 69 W. 25 poles to 2 chestnut oaks on Philipans ridge, S. 55 E. 74 poles to a double maple, white oak, and pine on the east fork of Simmons creek, and down the same to Robert Belcher's 1,500 acres, and with it to Philipans creek, and up the same to the beginning.

And the said parties of the first part do hereby covenant with the party of the second part that the- will warrant and defend the property hereby conveyed from them and their heirs and all others forever, with all its appurtenances.

Witness the following signatures and seals.

his
CHRISPIANOS x BELCHER.
mark.

her
REBECCA x BELCHER. [SEAL.]
mark.

Attest: JOHN W. JAMES.

STATE OF MISSOURI, }
County of Montgomery, } ss:

288 Be it remembered that Chrispianos Belcher and his wife, Rebecca Belcher, who are personally known to the undersigned, a notary public, duly commissioned and qualified, within and for said county, to be the persons whose names are subscribed to the within or foregoing deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein contained; and the said Rebecca Belcher, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from her said husband, that she executed the same and relinquished her dower in the real estate therein mentioned freely and without compulsion or undue influence of her said husband.

Given under my hand and official seal the tenth day of September, 1873.

[L. S.] JOHN W. JAMES,
Notary Public.

WEST VIRGINIA:

In the Clerk's Office of Mercer County Court.

JANUARY 6, 1874.

This deed of bargain and sale from Chrispianos Belcher and Rebecca Belcher, his wife, to Mary E. Belcher, conveying land, with a certificate of acknowledgement before a notary public of Montgomery county, Mo., and privy examination of Rebecca Belcher apart from her said husband, was this day presented in said office and admitted to record.

Teste: B. G. McNUTT, *Clerk.*

WEST VIRGINIA,
County of Mercer, } *To wit:*

I, Sam'l P. Pearis, clerk of the county court of said county, do hereby certify that the foregoing writing is a true and correct copy from the records of my office.

Given under my hand this 8th day of April, 1886.

289 SAM'L P. PEARIS, *Clerk.*

Fee for copy, 65c., ch'g'd to Jos. I. Doran.
B'k 7, pg. 433.

And now, at this day, to wit, at a district court of the United States for the district of West Virginia, holden at Charleston on the 18th day of February, 1888, among the proceedings had was the following, to wit:

JOSEPH I. DORAN, Plaintiff,
vs.
SIMMONS CREEK COAL COMPANY *et als.*, Defendants. } In Equity.

This cause came on this 17th day of February, 1888, for a final hearing, and was argued by counsel, and, upon mature consideration, the court is of opinion that the plaintiff is entitled to the relief prayed for in his bill; and it appearing to the court that at and before the date of the deed from the defendant, Robert D. Belcher, to William H. Witten, bearing date the 23rd day of December, 1852, for two hundred acres of land, more or less, the said Robert D. Belcher, was the owner, by purchase from Chrispianos Belcher, of 800 acres of land, of which the said 200 acres, more or less, was and is a part, which said 800 acres was bounded east by Simmons creek, commencing at the 2 birches mentioned in the said deed and running thence up said creek, with its meanders, to the mouth of the middle fork thereof, and thence up the left-hand fork of said creek, with its meanders, to two spruce pines and a white oak, corner to

William Miller's survey of 100 acres, and also a tract of 150 acres conveyed by Chrispianos Belcher and wife to William Payne, and which tract of 800 acres is shown on the map filed with the deposition of the said William Miller in this cause;

And it further appearing to the court that by reason of a dispute in reference to the true west line of the said 800 acres of land
290 the said Chrispianos Belcher conveyed to the said Robert B. Belcher by deed the said two hundred acres of land, more or less, the same being part of said 800 acres, bounded or intended to be bounded east by Simmons creek, as above stated, which deed was never recorded and is lost and cannot be found; and it further appearing to the court that by the contract and agreement between the said Robert D. Belcher and the said William H. Witten, under which said deed of the 23rd of December, 1852, was executed, the boundary line of the said deed from the two birches to the six chestnuts was to be inserted in said deed as follows: "Beginning at the two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up and with said creek and with William Miller's line to the mouth of the middle fork of said creek, as is now shown on the map of Surveyor Sinnett, made and filed in this cause, marked 'Decree Map, Feb. 17th, 1888,' and made part of this decree; thence up and with the left-hand fork of said creek, as is shown on said map, to the point shown on said map by the letter 'E,' which is a corner of a survey of 100 acres then owned by the said William Miller, and also of the tract of 150 acres adjoining said Miller's survey, then owned by the said William H. Witten and R. C. Graham, both of which said tracts are laid down on said map, and thence, with the line of the said Miller survey of 100 acres, to six chestnuts at the point shown on said map by the words 'six chestnuts' and the letter 'D;'"

And it further appearing to the court that by the mistake and inadvertence of the drawer of said deed the calls thereof from the said two birches to the six chestnuts do not conform to and carry out the contract and intentions of the parties to said deed or to the boundary lines thereof from the two birches to the six chestnuts, it is therefore adjudged, ordered, and decreed that the said lost
291 deed of the said Chrispianos Belcher to the said Robert D. Belcher for the said 200 acres of land, more or less, be, and the same is hereby, set up as a monument of the title of the plaintiff in this cause to the said 200 acres of land, more or less, a part of which said tract is in controversy in this suit, and it is to have the same force and effect as such monument of title as if said deed were not in existence and of record with the boundary lines of said tract of land from the two birches to the six chestnuts, as hereinabove stated; and it is further adjudged, ordered, and decreed that the said mistake in the calls of the said deed of the said Robert D. Belcher to the said William H. Witten, bearing date the 23rd day of December, 1852, from the said two birches to the said six chestnuts, be, and the same is hereby, corrected and the said calls made to correspond with the contract and intent of the parties to said deed as follows:

"Beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, and running thence up and with said creek with William Miller's line to the mouth of the middle fork of said creek; thence up and with the left-hand fork of said creek to two spruce pines and a white oak, corner to said William Miller's survey of 100 acres, and thence with the line of said survey to six chestnuts, also a corner thereof;" and that the said plaintiff be, and he is hereby, forever quieted in his title, possession, control, and enjoyment of the said two hundred acres of land, more or less, within the boundary lines of the said deed of Robert D. Belcher to said William H. Witten therefor as is hereby corrected.

And it further appearing to the court that the said William H. Witen and those claiming under him took and held the possession of the said 200 acres of land, more or less, under his said deed from R. D. Belcher from the date thereof to the year 1884, claiming the same up to the line of Simmons creek, as herein stated, with-
292 out question or objections by the said Chrispianos Belcher, R. D. Belcher, or any other person;

And it further appearing to the court that the defendant, "Simmons Creek Coal Company," was at the commencement of this suit and still is claiming a portion of the said tract of land of 200 acres, more or less, in defiance of the rights of the plaintiff, who is the true owner thereof, under the following-named deeds of record in the county of Mercer, in this district, where said land is situate, to wit: A deed from George W. Belcher & wife to Newton L. Reynolds, dated the 4th day of December, 1884; also a deed from George W. Belcher & wife to P. H. Rorer, dated February 25th, 1885; also a deed from N. L. Reynolds to J. A. Welch, dated January 13th, 1885; also a deed from J. A. Welch & wife to A. W. Reynolds, dated January 13th, 1885; also a deed from J. A. Welch & wife to Simmons Creek — Company, dated February 28th, 1885; also a deed from A. W. Reynolds to Simmons Creek Coal Company, dated February 28th, 1885; also a deed from from P. H. Rorer & wife to Simmons Creek Coal Company, dated February 28th, 1885; also a deed from N. L. Reynolds to Simmons Creek Coal Company, dated February 28th, 1885; and that the said claim of said defendant and the said deeds and each of them constitute a serious and damaging cloud upon the title of the said plaintiff to so much of his said land as is covered by the said claim of the said defendant, "Simmons Creek Coal Company," under said deeds and each of them, it is therefore further adjudged, ordered, and decreed that the said deeds and each of them be, and they are hereby, set aside, vacated, and annulled, and the claim of the said defendant to the said lands so set up as aforesaid under said deeds be held for naught; and it is further adjudged, ordered, and decreed that the said defendant, "Simmons Creek Coal Company," do pay to the plaintiff his costs by him expended and incurred in the prosecution of this suit, to be taxed, and that if necessary he may have execution therefor.

293 On motion of the defendants an appeal is awarded them from the decree entered this day in this cause to the Supreme Court of the United States, but this appeal is not to take effect until

the defendants or some one of them or some one for them shall enter into a bond, with security, to be approved by the judge of this court, in the penalty of $500.00, with condition that appellants shall duly prosecute their said appeal with effect, and moreover pay the amount of costs and damages rendered and to be rendered in case the decree shall be affirmed; and this court doth certify that the matter in controversy in this cause does exceed the sum of $5,000.00 exclusive of interest or costs, and that the same has been made apparent to this court by satisfactory evidence.

The map called for and filed as part of the foregoing decree is in the words and figures following, to wit:

(See map here inserted.)

(Here follows map marked page 293.)

294 The bond required is in the words and figures *and* following, to wit:

Bond.

Know all men by these presents that we, Simmons Creek Coal Company and Geo. W. Belcher, N. L. Reynolds, and J. A. Welch, are held and firmly bound unto Joseph I. Doran in the just and full sum of five hundred dollars; to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, 1888.

The condition of the above obligation is such that whereas the Simmons Creek Coal Company & others have procured from the judge of the district court of the United States for the district of West Virginia, at Charleston, in said district, an appeal from a decree entered by said court on the 18th day of February, 1888, in *in* a chancery cause depending in said court, at Charleston, in said district, wherein the said Joseph I. Doran is complainant and the said Simmons Creek Coal Company & others are defendants:

Now, therefore, if the said Simmons Creek Coal Company & others shall duly prosecute their said appeal with effect, and moreover pay the amount of all costs and damages rendered and to be rendered in case the said decree shall be affirmed, then this obligation to be void; else to remain in full force.

SIMMONS CREEK COAL COMPANY,
By J. A. WELCH, *President.*
GEO. W. BELCHER. [SEAL.]
N. L. REYNOLDS. [SEAL.]
J. A. WELCH. [SEAL.]

Proven before me and approved, the said sureties being first duly qualified as to their sufficiency. I know the parties and am satisfied as to their sufficiency.

Feb'y 25th, '88.

JNO. W. McCREARY,
U. S. Com'r, Dist. of W. Va.

Bond approved.

J. J. JACKSON,
U. S. D. Judge, D. W. Va.

March 6th, 1888.

295 I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true and correct transcript of the records and proceedings had in my said court, at Charleston, in a chancery cause lately pending therein, wherein Joseph I. Doran was plaintiff and The "Simmons Creek Coal Company" and others were defendants.

Seal District Court United States, District West Virginia. Charleston, West Va.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my said court, at Charleston, this 14th day of June, A.D. 1888, and of the Independence of the United States of America the 112th.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

296 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the district of West Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, at Charleston, between Joseph I. Doran and The "Simmons Creek Coal Company" & others, a manifest error hath happened, to the great damage of the said Simmons Creek Coal Company & others, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the

297 said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice of the said Supreme Court, the 14th day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

297½ [Endorsed:] Joseph I. Doran *v.* Simmons Creek Coal Company & others. In ch'y.

298 The United States of America —, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk'- office of the district court of the United States for the district of West Virginia, holden at Charleston, wherein The Simmons Creek Coal Company and others — plaintiffs in error and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff- in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should — be done to the parties in that behalf.

Witness the honorable judge of the district court of the United States for the district of West Virginia, this 14th day of June, in the year of our Lord one thousand eight hundred and eighty-eight.

Seal District Court United States, District West Virginia. Charleston, West Va.

J. J. JACKSON,
U. S. Dist. Judge.

299 [Endorsed:] Jos. I. Doran *v.* Simmons Creek Coal Company & others. In ch'y. I accept service of the within writ this Aug: 9th, 1888. James H. Ferguson, att'y for pl'ff.

Endorsed on cover: West Virginia D. C. U. S. No. 408. The Simmons Creek Coal Company *et al.*, appellants, *vs.* Joseph I. Doran. Filed August 25, 1888.

Office Supreme Court U. S.
FILED,
OCT 5 1891
JAMES H. McKENNEY,
CLERK.

—IN THE—

Supreme Court of the United States.

SIMMONS CREEK COAL CO., APPELLANT,

vs.

JOSEPH I. DORAN.

BRIEF OF ARGUMENT.

A. W. REYNOLDS, FOR APPELLANT.

Supreme Court of the United States.

SIMMONS CREEK COAL CO., APPELLANT,

vs.

JOSEPH I. DORAN.

BRIEF OF COUNSEL FOR APPELLANT, SIMMONS CREEK COAL COMPANY.

OBJECT OF THE SUIT.

This suit in equity was brought by Joseph I. Doran against the Simmons Creek Coal Company, et al.:

First, for the purpose of establishing a lost deed alleged to have been executed by one Chrispianos Belcher to one Robert D. Belcher, for 200 acres, more or less, of land, and to correct a mistake of boundary therein.

Second, For the purpose of construing a certain deed executed on the 23d day of December, 1852, by the said Robert D. Belcher to one Wm. H. Witten, for the same 200 acres of land, and to correct an alleged mistake of description of boundaries therein.

Third, For the purpose of setting aside certain deeds constituting a chain of title from the said Chrispianos Belcher down to the Simmons Creek Coal Co. to the land in controversy, which the said Doran claims is part of the said 200 acres, more or less; and to recover against the Simmons Creek Coal Company the possession of the land in controversy.

BRIEF POINTS OF DEFENSE.

1st. A court of equity has no jurisdiction of this case.

2d. The land in controversy is not part of the said 200 acres, more or less, and the complainant's prayer for the correction of deeds cannot be granted.

3d. The alleged lost deed never existed, and said Doran did not have title to said 200 acres at the time the said company and its vendors acquired title to the land in controversy.

4th. The correction of the lost deed and the deed of December 23d, 1852, from Robert D. Belcher to Wm. H. Witten, involves the enforcement of an alleged contract, which is within the Statute of Frauds.

5th. The deed of Robert D. Belcher to Wm. H. Witten, of December 23d, 1852, is sought to be corrected between parties to this suit, who are neither parties to the deed, nor privies of the parties thereto.

6th. The mistakes sought to be corrected in the said deeds are unilateral mistakes and cannot be corrected.

7th. Complainant's claim is stale.

8th. The appellant, Simmons Creek Coal Company, is a purchaser of the land in controversy, for value, without notice of the alleged lost deed, and is protected.

9th. The complainant has now no title to the said 200 acres, more or less; the title thereto was forfeited and vested in the Commonwealth of Virginia under the act of Assembly of 1852, and by virtue of the constitution of this state is now vested in the state of West Virginia.

All of these points are raised by the bill and answer and the evidence in the cause.

On the 17th day of February, 1888, a final decree was made in the said cause, record page 185, from which the appellant obtained this appeal.

ERRORS IN DECREE.

1st. The court erred in establishing the alleged lost deed from Chrispianos Belcher to Robert D. Belcher, and in correcting the alleged mistake therein.

2d. The court erred in setting aside the deeds under which the appellant claims as clouds on complainant's title.

3d. The court erred in correcting the alleged mistake in the deed from Robert D. Belcher to Wm. H. Witten, dated December 23d, 1852.

Before proceeding with the argument a brief history of the title under which each party claims, will make the argument more comprehensive.

The complainant claims that in 1844 Chrispianos Belcher was the owner of 1,500 acres of land, more or less, and conveyed 200 acres more or less, of it to Robert D. Belcher, by deed which was lost and never recorded; that on December 23d, 1852, Robert D. Belcher conveyed the same 200 acres, more or less, to Wm. H. Witten, who afterwards conveyed it to complainant.

The appellant also claims that the said Chrispianos Belcher was the owner of the 1,500 acres aforesaid; that on the 18th day of October, 1884, said Chrispianos Belcher conveyed a tract of land called 75 acres more or less, of which the land in controversy is part, to one George W. Belcher; that the said George W. Belcher conveyed the same land to P. H. Rorer, et al., who conveyed it to appellant, Simmons Creek Coal Company.

Chrispianos Belcher is the remote common vendor of both parties.

PROPOSITION I.

A COURT OF EQUITY HAS NO JURISDICTION IN THIS CASE.

1st. The bill alleges that the defendant is in pos-

session. Complainant's remedy was at law. He cannot maintain a bill to remove a cloud from his title when he is out of possession.

United States vs. Wilson, 118 U. S., 86.
Orten vs. Smith, 18 Howard, 263.
Hipp vs. Babin, 19 Howard, 271.
Ellis vs. Davis, 109 U. S., 485.
Killian vs. Ebbinghaus, 110 U. S., 550.

2d. The bill has no other object that can affect appellant than to remove appellant's deeds as a cloud on complainant's title and to recover possession. The deeds asked to be construed could have been construed at law. It was competent for the court to construe the deeds when offered in evidence in an action of ejectment, and give effect to the construction by proper instructions to the jury.

3d. The deed from Robert D. Belcher to Wm. H. Witten, of December 23d, 1852, cannot be corrected as between complainant and appellant, because appellant is not privy thereto, and jurisdiction must fail on that ground.

1 Story's Equity Jurisprudence, sec. 165.
2 Wait's Actions and Defenses, 512.
Cross et al. vs. Bean et al., 17 Atlantic Reporter 710.
Baskins vs. Calhoun, 45 Ala. 582.
Adams vs. Stephens, 49 Me., 362.
Rhodes vs. Outcalt, 48 Mo., 367.

Simpson vs. Montgomery, 25 Ark., 365.

4th. The alleged lost deed could have been proven in an action at law for the recovery of possession.

1 Greenleaf on Evidence, sec. 558.

United States vs. Reyburn, 6 Pet., 352.

5th. The allegation of fraud cannot give jurisdiction.

(*a*) Because courts of law and courts of equity have concurrent jurisdiction in cases of fraud and proof of the fraud alleged in the bill could have been made at law, which would have availed complainant as effectually in an action in ejectment.

Gregg vs. Sayre, 8 Pet., 244.

Swayze vs. Burke, 12 Pet., 11.

Blanchard vs. Brown, 3 Wallace, 245.

(*b*) Because there is not a scintilla of proof in the record to sustain the charge of fraud in the bill; the appellant could have been guilty of no fraud without notice of the alleged lost deed, and it is not pretended in the proof that it had such notice. Appellant and its vendors purchased the land from the person they believed to be the owner.

(*c*) A mere allegation of fraud, when there is no other ground for jurisdiction, will not give equity jurisdiction; it must be proved.

6th. The appellant was entitled to its constitu-

tional right of trial by jury, of which it was deprived by bringing this suit in equity.

Section 10 of Article 3 of the Constitution of West Virginia, reads as follows: "No person shall be deprived of life, liberty or property without due process of law, and the judgment of his peers."

Article 7 of the Constitution of the United States provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved," &c.; and the same provision is adopted in the Constitution of West Virginia.

In Norris's Appeal, 64 Penn., St., page 275, the court says: "A court of equity has no jurisdiction to fix boundaries of legal estates, unless some equity is superinduced by the act of the parties."

In the North Penn. Coal Co. vs. Snowdon, 42 Penn. St., 488, Judge Strong says:

"A court of equity have no jurisdiction of a bill in equity, brought by one tenant in common against an alleged co-tenant to obtain the possession and enjoyment of mining rights and privileges founded on legal title, until those rights have been established at law. The Act of April 22d, 1856, giving a tenant in common, in coal or iron mines, whose right is denied or resisted, the power to apply by petition in equity to the Court of Common Pleas of the county where the lands may be, who should abjudi-

cate and determine the rights of the several parties according to the course of a court of chancery, conflicts with the constitutional right of the citizen to have controverted questions of fact in common law causes decided by a jury; and it is applicable only to cases in which the rights of the complainants are equitable."

This principle is sustained by the Supreme Court in the following cases:

Killian vs. Ebbinghaus, 110 U. S., 568.

Lewis vs. Cocks, 90 U. S., 446.

Hipp vs. Babin, 19 Howard, 278.

Also Cooley's Constitutional Limitations, 369, and notes.

PROPOSITION II.

The land in controversy is not part of the complainant's 200 acres, more or less, and complainant's prayer for the correction of deeds cannot be granted.

The deed from Robert D. Belcher to Wm. H. Witten, dated December 23d, 1852, describes the land as follows:

"Beginning at two birches on Simmons corner, to Chrispianos Belcher's land, thence up said creek with Miller's line S., 55 W., 120 poles to six chestnuts, corner to Miller's survey, and with the same S. 35 E., 310 poles to a double and single poplar,

corner to said Belcher, and with the same N. 40 E., 250 poles to the beginning."

The boundary line of the 200 acres running from the two birches, the beginning corner, to the six chestnuts, is the one in dispute.

A straight line from the two birches, the beginning corner, to the next corner, the six chestnuts, does not embrace the land in controversy as part of complainant's tract.

I earnestly submit that the call is for one line, and the legal construction of the deed will sustain but one line, a straight line from the two birches to the six chestnuts.

This position was sustained by the court below; the judge found it necessary to correct the alleged mistake in the descriptions in the deeds, of the boundary of the complainant's tract extending from the two birches to the six chestnuts, in order to embrace the land in controversy, which was done in the final decree.

Reference to the map made by the surveyor, A. P. Sinnet, which will be found at page 88 of the record, will present more intelligibly the position of the disputed lines than I can do in language. The many branches of Simmons' Creek are represented on the map; the fork of the creek that complainant claims his line must follow, is accurately represented

upon the map by actual survey; *and the fork of Simmons' Creek, which has its source near the straight line from the two birches to the six chestnuts, and runs almost parallel with and very near to the straight line to the two birches, is also correctly laid down upon the said map by actual survey.*

The beginning corner of complainant's 200 acres, at the two birches, is designated by the letter A on the map and the six chestnuts by the letter D.

There is no controversy as to the location of the two birches, the beginning corner of the complainant's tract, and the appellant's tract; and no controversy as to the location of the six chestnuts called for in the deeds of both complainant and appellant.

The two corners being established beyond controversy, they control course and distance, and less material calls, and the line must be run straight from one to the other.

Friend et al. vs. Friend, (Md.) Atlantic Reporter, 865.

Whorton vs. Brick et al. (N. J.) 8 Atlantic Reporter, 529.

White vs. Luning, 93 U. S. (3 Otto) 514-527.

The three corners called for in the said deed of Dec. 23d, 1852, under which complainant claims are all well known, undisputed, and well established;

and lines run straight from corner to corner called for, will enclose a triangle.

Complainant claims that the said deed conveys a tract in shape a pentagon. It is impossible to deduce from the language of the deed an intention of the parties to convey a tract with five sides and five corners, when they only call for three corners. If it had been intended that the tract should have five corners they would have called for them.

Complainant says the deed from Robert D. Belcher to Wm. H. Witten calls for running up Simmons' Creek and it must follow the creek. Which fork of the creek? A legal construction of the said deed, according to well-settled principles, will ascertain that it means the fork of Simmons' Creek, which runs nearest upon and parallel to a straight line from one corner to the other. It means running up the general course of the creek.

This position is sustained by the Supreme Court of New Jersey, in the case of Whorton vs. Brick et al.: the case was decided and reported in 6 Atlantic Reporter, 442, and was afterwards re-argued and re-considered by the court and the first decision affirmed and reported again in 8 Atlantic Reporter, 529.

The case is well considered by that able court: it is a recent case and was considered in the light of all the authorities, and is so conclusive of this case

that the entire opinion is quoted and reads as follows:

"The declaration in this cause is in trespass, and sets forth that the defendants broke and entered a certain close of the plaintiff, in the Township of Hammonton, in the county of Atlantic, and dug up and carried away a large quantity of cranberry vines, the property of the plaintiff. The plaintiff put in evidence two surveys, as the origin of his title to the *locus in quo*, and traced the title from them, through several mesne conveyances, to himself. One of those surveys is called the "George West 110-acre Survey," and the other is termed the "West and Shreve 600-acre Survey." The one last mentioned includes the first named, and the question is whether the West and Shreve 600-acre Survey of plaintiff covers the *locus in quo*. This question was submitted to the jury by the trial judge, with a request to answer it in writing. The jury answered the question in the negative, and found the defendants not guilty. The plaintiff now moves to set aside the verdict.

There is no controversy about the beginning point of the West and Shreve survey. The difficulty is as to the true location of its second line. The description (after fixing the beginning) is as follows, viz:

"Thence (1) north, 39 deg. 15 min. east, 141

chains and 60 links to the main branch of the Mechescatuxen; thence (2) north, 72 deg. 30 min. west, up the said Mechescatuxen, 211 chains and 70 links, to the mouth of O'Neil's branch, where it empties into the said Mechescatuxen; thence (3) up the said O'Neil's branch, the general course being south, 84 deg. 30 min. west, 261 chains," &c. If the second line of the survey be run from where the end of the first line strikes the Mechescatuxen, along the said branch the several courses thereof, to where O'Neil's branch empties into it, the survey will include the *locus in quo*, and the plaintiff be entitled to a verdict; but, if the second line of said survey be run on the course called for by the survey, or be run on one straight line to where the defendant claimed the mouth of O'Neil's branch was, then the survey will not include the *locus in quo*, and the defendants be entitled to a verdict.

The question in the cause therefore is as to the true construction of the description of the second line of the West and Shreve 600-acre survey. This is a question of law, and not for the jury.

But it was a proper question for the jury to determine where the mouth of O'Neil's branch was; and, the jury having answered the question submitted to them by the court, viz: whether the survey included the *locus in quo*, the jury must have found the mouth of O'Neil's branch to be where the de-

fendants claimed it; and we do not perceive from examination of the testimony that such finding was against the weight of evidence. It is a rule of construction that all parts of a description should be made to stand and harmonize if possible. It is also held that a general description must give way to a particular one.

The Mechescatuxen is crossed, and in its serpentine course runs east of a straight line between the beginning and ending monuments called for in the description. If the second line of the survey be run the several courses of the branch, it would be inconsistent with that part of the description which calls for one straight line from monument to monument. The several courses of the branch should not be followed because the description does not so call, but gives a single course. The meaning of the words "up the Mechescatuxen" is that the line runs in the direction of up the branch. If the line be run as a straight line, it does not contradict the other part of the description. If it had been intended that the Mechescatuxen should be followed in its windings, the description of the second line would have contained the words, "the several courses thereof," or the words, "the general course thereof being," or some words equivalent thereto. Such words are used where it is intended that a line should follow a tortuous branch or stream. The

very next line of this survey furnishes an iilustration of the truth of this. It is thus, viz: "Up the said O'Neil's branch, the general course being," etc. The draughtsman of the description intended that line to follow the windings of O'Neil's branch, and hence he excluded the idea that it was governed by a single course by writing, "the general course being," etc.

The jury did not answer the other questions submitted to them by the judge, viz: "Whether the three acre prior survey of defendants included the *locus*, and therefore the verdict cannot be sustained on the theory that it did cover the place of the alleged trespass. The jury, however, found that the plaintiff's survey did not embrace the *locus*, and the result being right, the verdict should stand."

In the case of White vs. Luning, 93 U. S. (3 Otto) 514-527, in the construction of a deed as to boundary, the court said:

"There are, therefore, three descriptive errors, which, if removed from the deed, would harmonize all other particulars in it, and leave enough words of description to identify the land in controversy. These errors will be noticed in the order stated by the court.

(1) The deed closes with these words: "And thence S. 41 37′ E. 17.32 chains to the place of beginning" This distance was correct, and so was

the course, except in one particular. It should have been West instead of East. To follow the course as given would manifestly not close the lines of the survey; and, as other things being equal, boundaries prevail over courses, the court rejected the latter and adopted the former as the true description in this particular. In this it was so obviously right that further comment is unnecessary.

(2) The next error relates to the "fence along the line of partition." There is a call for this fence as a boundary during the running of seven courses; but it is plainly a false call, after the sixth course had been run in, for the seventh course departs at nearly right angles from the line of the fence, and if this course be rejected and the call for the fence retained, none of the other calls in the deed can be complied with, and the instrument is wholly unintelligible. On the contrary, if this course be accepted as the true description, and the call for the fence be discarded at the termination of the sixth course, there is no difficulty in harmonizing the other parts of the deed, with the exception of the Northern boundary, and the difficulty there, we think, can be easily removed. In such a state of case it would be plainly wrong, not to say absurd, to retain the call for the fence, and reject the call for the course and distance. The reason why monuments, as a general thing, in the determination of boundaries control

courses and distances, is that they are less liable to mistakes; but the rule ceases with the reason for it. If they are inconsistent with the calls for other monuments, and it is apparent from all the other particulars in the deed that they were inadvertently inserted, the reason for retaining them no longer exists, and they will be rejected as false and repugnant.

(3) This applies with equal, if not greater force, to the last and main error in this deed. Adopting the seventh course as the true description, the calls in the deed proceed as follows: "N. 47½ east 127 chains to the north boundery of the *rancho* Sal Si Puedes on the mountains, thence along said north boundary the following courses," etc.

The calls for these boundaries are equally false and mistaken with the call for continuing the line along the partition fence, as is clearly shown in the findings of fact by the court below. There are two ranges of mountains in the direction of the course N. 47¼ E. The summit of the first range is the northerly boundary line between the counties of Santa Cruz and Santa Clara, and both the summit and county line are about the distance of 127 chains from the point in the partition fence where the course N. 47½ E. begins.

There is another range of mountains in the same northerly direction, in the county of Santa Clara,

about three quarters of a mile beyond the summit of the first range, and the northerly boundary of the rancho Sal Si Puedes is on this range of mountains.

The calls for courses and distances run along the summit of the first range, and do not apply to the second range at all. Besides this, if the summit of the first range be treated as the boundary intended to be called for, all other calls, monuments, courses and distances in the deed completely harmonize, except the two descriptive errors which have already been corrected, and the lines inclose a tract of the precise number of acres sued for, lying wholly within the county of Santa Cruz. But if the call for "the north boundary of the *rancho*" be retained as the true description, there is not only conflict with all the subsequent courses and distances, but all the subsequent monuments mentioned in the deed, and the lines would not enclose the land in controversy, nor indeed, any other land.

With all these facts to rest upon, is not the conclusion irresistible, that the words of the call at the end of the course N. 47½ E. 127 chains, to wit: "The north boundary of the *rancho* Sal Si Puedes on the mountains," and "along said boundary the following courses" were mistakenly inserted, and should be rejected?

Rejecting them with other particulars we have named, from the deed as false and inconsistent

with the other parts of the description and these parts being true, and sufficient of themselves to make a complete instrument, we are able to give effect to this judicial sale according to the plain and manifest meaning of the officer who had it in charge."

There is a plat printed in the report of that case, which illustrates the points decided.

I have inserted on the margin of the above quotation the numbers 1, 2 and 3, for convenient reference to the points decided.

1st. The first point decided in that case establishes a precedent, which, if followed in the construction of the deed from Robert D. Belcher to Wm H. Witten, dated Dec. 23d, 1852, will authorize the construction of the course "S. 55 W." from the two birches to the six chestnuts to mean "N. 55 W." to the six chestnuts. The true course from the two birches to the six chestnuts, as found by Surveyor Sinnet, is N. 50° 10' W. (See his report at page 84 of the record.) A line run on the course N. 55 W. from the two birches will very nearly strike the six chestnuts.

2nd. Upon the precedent established by the second point, the call for running up Simmons' Creek will be rejected in the construction of the said deed, except so far as it means to run up the general course of the creek.

3d. Upon the precedent established by the third point in that case, Miller's line will be discarded in the construction of the said deed, and the Simmons' Creek called for, will be held to mean the fork of the creek which runs nearest to and parallel with the straight line from the two birches to the six chestnuts called for. (See Sinnett's map at page 88 of the record.)

There are only three corners called for in the said deed, all of which are well-known and undisputed, and are clearly represented on the said map of the surveyor, A. P. Sinnett; a line run straight from each of the said corners to the next corner called for in the description, encloses 246 acres, 46 acres more than complainants said deed calls for. (See report of Surveyor Sinnett, page 87 of the record.

I respectfully submit that a careful examination of these cases and a correct application of the precedents established by them to the points involved in the construction of said deed, in the light of the evidence produced by the complainant himself, to which I will now proceed to refer, will be conclusive in favor of the straight line.

But they say it calls for Miller's line and must follow it. Where is Miller's line, I again ask? Complainant relies on the testimony of Wm. Miller to fix the location of this line, and, in order to iden-

tify the location of said line, complainant propounds to him the following question, on page 171 of the record:

Ques. 9. "Please examine map of the lands on waters of Simmons' and Fliping Creeks, made from old deeds, marked property of Jos. I. Doran, et. al., and file the same with your deposition and point out on said map the west and north lines of your said six hundred-acre purchase from Obediah Belcher, and the south line of said one hundred-acre tract?"

Ans. "I have no noted place to tell you. The west line ran up to Obediah Belcher's home place, on the Middle Fork of Simmons' Creek, commencing at the two birches on the main creek.

The north line was the marked line between my six hundred-acre tract and Obediah Belcher's home tract.

The south line of my hundred-acre tract ran from the six chestnuts to Simmons' Creek, to Paynes' line, or Paynes' corner."

This witness locates Miller's line, as running from the two birches, up the Middle Fork of Simmons' Creek, which diverges far away from the land in controversy. See the map referred to in the above question at page 174 of the record and surveyor, Sinnett's map at page 88 of the record.

This testimony in connection with the said maps show that the two tracts claimed by Wm. Miller do not join; that the said "Payne tract" and that part of appellants' land which is not in controversy lie between the two tracts claimed by said Miller, separating them from each other at a considerable distance. I conclude:

1st. That Miller's *line* cannot be followed from the birches to the six chestnuts, because it does not run to them.

2d. Miller's *lines* cannot be followed to the six chestnuts, because they do not connect, falling far short of a connection.

3d. Simmons' Creek cannot be followed to the six chestnuts, because it does not run by them.

4th. Simmons' Creek cannot be followed from the two birches till a connection with Miller's line is reached, and then with Miller's line to the six chestnuts, because Miller's line does not extend from the six chestnuts to Simmons' Creek; it only extends to "Payne's corner," on the left hand fork of Simmons' Creek. (See above mentioned maps.)

Complainant starts out with the main stream in preference to one of its forks, which is on, or nearly on, the straight line from the birches to the six chestnuts; but he does not stick to it, he leaves it before he gets to the chestnuts and branches off on

the left hand fork. Complainant proves himself out of court by his own witness.

The cross-examination of the witness, Wm. Miller, develops the fact that there was a dispute between him and his vendar as to where the lines were located; there is no certainty about them. In the said deed from Robert D. Belcher to Wm. H. Witten, of Dec. 23d, 1852, the second line running from the six chestnuts to the double and single poplar on the opposite side of the tract from the land in controversy, calls for running with Miller's line; there is no pretension that Miller owned that land, on the contrary the evidence shows that he never owned it. There is no certainty about this call for Miller's line anywhere. Robert D. Belcher, in his deposition on page 135 of the record, testifies as follows:

Ques. 8. "Did you understand in making the deed to Wm. H. Witten, and did you understand when Chrispianos conveyed to you that you went up Simmons' Creek with Miller's line to a point and then went South 55 West 120 poles to the six chestnuts?"

Ans. "No. I just understood that I went up Simmons' Creek, cornering on six chestnuts."

Ques. 9. "Where was Miller's line?"

Ans. "I ain't able to tell exactly where, but my

understanding was that it was running up that creek. The deeds calls it, don't it? My understanding was that it run up the creek; the deed calls for it. I don't understand nothing about it. I I am going by that deed."

(The witness does not say that he understood Miller's line ran with the meanderings of the creek.)

Page 136 of the record; the witness proceeds as follows:

Ques. 18. Was it your understanding that your deed run a straight line from the birches to the six chestnuts?"

Ans. "*I can't tell you what my understanding was now about it. It has been a long time ago.*"

This is the only party to either the alleged lost deed, or the deed from Robert D. Belcher to Wm. H. Witten, whose testimony complainant dared to take. He proves complainant out of court. He says positively that it was not his understanding that the line was to run up. Simmons' Creek with Miller's line to a point, and thence run S. 55 W. 120 poles to the six chestnuts. In this one statement he positively contradicts the whole theory of the complainant's case.

The testimony of Wm. H. Witten and Chrispianos Belcher is presumed to be against complainant, because they were both living, and he could have taken their testimony, and did not do it.

The complainant first tried to prove the line he claims by W. Scott Witten, son of Wm. H. Witten, who was also interested in the land. He states in his deposition, on page 91 of the record, as follows:

Ques. 14. "Please examine map now here shown you, marked property of Jos. I. Doran and others, by old deeds, and state if the boundary of said 200-acre tract, as claimed by your father prior to your purchase, is correctly laid down on said map; if so, state the boundary of said 200-acre tract as shown by said map and file same as part of your deposition?"

Ans. "The boundary lines as shown on said map are correct, as well as I remember, said land, the line of which begins on two birches on Simmons' Creek, running up said creek, *and when I sold the land I did not know which fork of the creek to go up,* and I run up the West Fork to, I think, a spruce pine and white oak, and I run S. 50 or 55 West. I believe 120 p. is called for by the deed; the map calls for 106 p —I am not sure as to my own knowledge how many poles it is, and I herewith file this map as part of my deposition. There are two lines I did not give, as follows: Running from six chestnuts S. 10½ E.——poles; thence to the beginning.

Even this crafty witness did not know which fork of the creek to run the line up; this witness, whose oath is so convenient that he undertakes to testify

about the lost deed and the deed from Robert D. Belcher to his father, that were executed, if at all, when he was only four years old; and, as we shall see further on, did not know of the lost deed in 1881. But the cross-examination got him in a close place, and he was forced to acknowledge that he knew nothing of his own knowledge about the matters he had been testifying about. (See cross-examination at pages 97, 98 and 99 of the record.)

It is most confidently submitted that all the objects mentioned in the call in said deed, when identified by complainant's own testimony, are inconsistent with any other than a straight line from the two birches to the six chestnuts.

Imperitive calls control those that are only directory. The six chestnuts is the imperative call in this case; Simmons' Creek and Miller's line are only directory, and intended only as a guide by which the location of the corner is to be found. This principal is so ably discussed by the Supreme Court of Maryland in the very recent case of Friend vs. Friend, 1. Atlantic Reporter, p. 865, which is so similar to this case, that special attention to it is respectfully solicited.

The court says in that case, page 867: "And it is a long since settled principal of construction in respect to location that meets and bounds in the description of the premesis granted control courses,

distances and quantities, when there is any inconsistency or conflict between them. This rule of construction is founded upon the principal that those particulars are to be regarded and preferred in which error is least likely to occur. And, therefore, the most material and certain calls must control those that are less material and certain in the location of the lines of description."

In applying this principal to that case, page 868, the court said:

"The hickory tree at the end of the first line, and the stone and maples at the end of the second, are both material and imperative calls in the location of the deed, and must control the survey if they can be ascertained; and the reference to the sixteenth line of Blooming Rose is merely directory. If al the material or artificial calls of Kensington, or of the deed for part of that tract, were lost, this inferential or secondary call, if properly located, would remain as a means of locating the junior tract; but not as an imperative and binding call, so long as the more certain and tangible objects called for can be correctly located. The defendant's location, therefore, of the second line of the deed, by a straight course from the hickory at the end of the first line, to the stone and maple stumps at the end of the second, was the correct location, and the court was right in so instructing the jury." And

in quoting approvingly from the case of Thomas vs. Godfrey, 3 Gill & J., 143, 151, the court further says: "But where such a line is referred to with a view to another object peremptorily called for, that object is the imperative call, and not the line referred to, and must be gratified, whether its position corresponds with the line referred to or not. As where there is a call to a tree described as standing in or at the end of a specified line of another tract of land, then the reference to the line is not considered as a peremptory call, controling the call of the tree; but the call to the tree is the imperative call, and must be gratified if it can be established, no matter where it stands, without regard to the line, which is to be taken as intended, only as a *designatio loci*, where the tree was supposed to stand." In that case the expressions of the calls were these: Beginning at a bound hickory on the side of a hill on the south side of the main falls of Patapsco, respecting to the West Chews Resolution Manor, and running with the said Manor S. 53 W. 200 perches to a bound hickory; then N. W. 340 perches, to a bound white oak; then, &c., and it was held that the first line of the patent should be run from the first to the second bound hickory, and that the expression, "running with the said Manor," did not constitute a peremptory call, but that the reference was directory only."

In further support of this principal see following cases, cited and extensively quoted from above.

Whorton vs. Brick, et. al., (N. J.) 8 Atlantic Reporter, 529.

White vs. Luning, 93 U. S. (3 Otto) 514-527. * show that : 200 acres. n both ac- Belcher to that Chris- birches. of land en- ne in 1854, "Simmons' Creek Fork." (*Not on Simmons' Creek.*)

* Parks v. Loomis, 6 Gray, 467; Boswe Cush., 392; Allen v. Kingsbury, 16 Picke v. Mullins, 121 Mass.. 143; Jenks v. M Martin v. Carlin, (19 Wisconsin, 454) 88 ford v. King, (30 Tex.. 257) 94 Am. Dec., Andrews, (Tex.) 9 S. W. Reporter, 170, 1

He continued it on the books with that local description as long as he owned it. But in 1882, after the complainant got it and discovered, as he thought, that he could hold the land in controversy, because the deed called for running up Simmons, Creek, he got the Clerk to change this local description to read as follows: "Dividing Ridge and Simmons' Creek." (See page 126 of the record.)

Again in 1854, when said Witten had this entry made on the land book, he and Robert D. Belcher had the land transferred, as part of a tract of 1500 acres, conveyed to Robert D. Belcher by James

in quoting approvingly from the case of Thomas vs. Godfrey,' 3 Gill & J., 143, 151, the court further says: "But where such a line is referred to with a view to another object peremptorily called for, that object is the imperative call, and not the line referred to, and must be gratified, whether its position corresponds with the line referred to or not. As where there is a call to a tree described as standing in or at the end of a specified line of another tract of land, then the reference to the line is not considered as a peremptory call, controling the call of the tree; but the call to the tree is the imperative call, and must be gratified if it can be established, no matter where it stands, without regard to the line, which is to be taken as intended, only as a *designatio loci*, where the tree was supposed to stand." In that case the expressions of the calls were these: Beginning at a bound hickory on the side of a hill on the south side of the main falls of Patapsco, respecting to the West Chews Resolution Manor, and running with the said Manor S. 53 W. 200 perches to a bound hickory; then N. W. 340 perches, to a bound white oak; then, &c., and it was held that the first line of the patent should be run from the first to the second bound hickory, and that the expression, "running with the said Manor," did not constitute a peremptory call, but that the reference was directory only."

In further support of this principal see following cases, cited and extensively quoted from above.

Whorton vs. Brick, et. al., (N. J.) 8 Atlantic Reporter, 529.

White vs. Luning, 93 U. S. (3 Otto) 514-527. ☛ *

☛ * **Parks v. Loomis, 6 Gray, 467; Bosworth v. Sturdevant, 2 Cush., 392; Allen v. Kingsbury, 16 Pickering, 235; Henshaw v. Mullins, 121 Mass.. 143; Jenks v. Morgan, 6 Gray, 448; Martin v. Carlin, (19 Wisconsin, 454) 88 Am. Dec.. 696; Stafford v. King, (30 Tex.. 257) 94 Am. Dec., 304, 309; Jones v. Andrews, (Tex.) 9 S. W. Reporter, 170, 173.**

Creek Fork." (*Not on Simmons' Creek.*)

He continued it on the books with that local description as long as he owned it. But in 1882, after the complainant got it and discovered, as he thought, that he could hold the land in controversy, because the deed called for running up Simmons, Creek, he got the Clerk to, change this local description to read as follows: "Dividing Ridge and Simmons' Creek." (See page 126 of the record.)

Again in 1854, when said Witten had this entry made on the land book, he and Robert D. Belcher had the land transferred, as part of a tract of 1500 acres, conveyed to Robert D. Belcher by James

in quoting approvingly from the case of Thomas vs. Godfrey, 3 Gill & J., 143, 151, the court further says: "But where such a line is referred to with a view [illegible] another object peremptorily called for, that o[illegible] [illegible] the line referr[illegible] tion [illegible] As [illegible] stan[illegible] anot[illegible] is n[illegible] call[illegible] per[illegible] tablished, no matter where it stands, [illegible] to the line, which is to be taken as intended, only as a *designatio loci*, where the tree was supposed to stand." In that case the expressions of the calls were these: Beginning at a bound hickory on the side of a hill on the south side of the main falls of Patapsco, respecting to the West Chews Resolution Manor, and running with the said Manor S. 53 W. 200 perches to a bound hickory; then N. W. 340 perches, to a bound white oak; then, &c., and it was held that the first line of the patent should be run from the first to the second bound hickory, and that the expression, "running with the said Manor," did not constitute a peremptory call, but that the reference was directory only."

In further support of this principal see following cases, cited and extensively quoted from above.

Whorton vs. Brick, et. al., (N. J.) 8 Atlantic Reporter, 529.

White vs. Luning, 93 U. S. (3 Otto) 514-527.

The actions of complainant's vendors show that the land in controversy is no part of the 200 acres.

Robert D. Belcher and Wm. H. Witten both acknowledge in the deed from Robert D. Belcher to Wm. H. Witten, dated Dec. 23d, 1852, that Chrispianos Belcher's land corners on the two birches.

Wm. H. Witten had this 200 acres of land entered on the land books for the first time in 1854, and he has it described as located on "Simmons' Creek Fork." (*Not on Simmons' Creek.*)

He continued it on the books with that local description as long as he owned it. But in 1882, after the complainant got it and discovered, as he thought, that he could hold the land in controversy, because the deed called for running up Simmons, Creek, he got the Clerk to change this local description to read as follows: "Dividing Ridge and Simmons' Creek." (See page 126 of the record.)

Again in 1854, when said Witten had this entry made on the land book, he and Robert D. Belcher had the land transferred, as part of a tract of 1500 acres, conveyed to Robert D. Belcher by James

Hector, which lies south of the land in controversy, and also south of the 200 acres. The north line of the said 1500 acres is shown on Surveyor Sinnett's map, and also on the map of complainant, filed in this case. (See cross-examination of S. P. Pearis, Clerk, on page 161 of the record.)

This is the reason why Wm. H. Witten has not testified in this case; he knows he never owned the land in controversy, and could not explain these matters.

Robert D. Belcher, on page 135 of the record, after testifying about the execution of the alleged lost deed, testified as follows:

Ques. 7. "Did you convey the same land to Wm. H Witten and by the same calls that Chrispianos Belcher conveyed to you?"

Ans. "Just exactly. The deeds were read at the same time; they were both wrote by the same man —Witten wrote them both. The calls in the deed from me to Witten were copied from the deed *to* Chrispianos to me, and all acknowledged by the same justice at the same time."

Wm. H. Witten wrote the deed to himself, and knew when he wrote it that it did not embrace the land in controversy, and acted on that knowledge when he gave the Clerk or Assessor the local description of the land, which he placed upon the land

book He did not dare to come on the witness stand in support of the complainant's pretensions.

They did not dare to put Chrispianos Belcher on the witness stand in support of complainant's pretended claim to this land, but contented themselves by taking the testimony of that emissary, S. W. Hammack, about what Chrispianos Belcher said about conveying George W. Belcher a piece of land in the forks of the creek. Why! Is not the land in controversy in the forks of the creek? Look at Surveyor Sinnett's may, at page 88 of the record. But it cropped out that a map had been used in explaining this controvery to Chrispianos Belcher, when he was induced to make the above statements. Complainant's counsel was forced to file that map with Hammack's deposition, but it has mysteriously disappeared and is no longer to be found in the record In the name of all that is sacred to justice, are such cases as this to be tolerated in this, the highest court of the nation?

Complainant asks this court, upon such testimony as this, to correct a solemn deed thirty-eight years old, and *to establish and correct a lost deed*, alleged to have been executed forty-six years ago.

The mistake in a written instrument, and the true intention of the parties must be proven to the exclusion of every reasonable doubt before a court of

equity will correct it. This was held in the case of Jarrell vs. Jarrell, 27 W. Va., 743.

The authorities are collected in the opinion of the court in that case as follows:

"Chief Justice Janey, in Tucker vs. Madden, 44 Me. 215, in delivering the opinion of the court, truly said: "It is a well established rule of law in courts of law that a written instrument duly executed contains the true agreement of the parties, and that the writing furnishes better evidence of the sense of the parties than any that can be supplied by parol. But equity has a jurisdiction which is broader, and will open the written contract to let in an equity arising from facts perfectly distinct from the construction of the instrument itself. It must be an essential ingredient to any relief under this head that it should be an accident perfectly distinct from the sense of the instrument. (Lord Thurlow, in Shelburne vs. Inchiquin, 1 Bro. Ch'y. 338.")

Lord Hardwicke said in Hinkle vs. Royal Exchange Insurance Co., 1 Ves. 319, that the court had jurisdiction to relieve in case of plain mistake in contracts in writing, as well as against fraud; but that those who undertake to rectify an instrument in writing by showing a mistake, undertake a task of great difficulty.

Lord Eldon, in his opinion in Marquis of Townsend v. Stanygroom, 6 Ves. 328, said:

"Lord Hardwicke, saying the proof ought to be the strongest possible, leaves a weighty caution to future judges. In Lady Shelburne v Lord Inchiquin, it is clear Lord Thurlow was influenced by this as the doctrine of the court, saying it was impossible to refuse as incompetent parol evidence, which goes to prove that words taken down in writing were contrary to the concurrent intention of the parties; but he always thought it must be of the highest nature, for he adds it must be irrefragable evidence."

Chancellor Kent in Gillespie v. Moore, 2 Johns. Ch'y. 507, said: "The cases concur in the strictness and difficulty of the proof, but still they all admit it to be competent, and the only question is: Does it satisfy the mind of the court? Lord Hardwicke said it must be proper proof and the strongest proof possible; and Lord Thurlow that it must be strong, irrefragable proof; and he said the difficulty of the proof was so great that there was no instance of its prevailing against a party insisting that there was no mistake."

In Edmonds' appeal, 59 Pa, St. 22, it appears that it was claimed that a mistake was made by the scrivener who prepared a policy of insurance, and inserted "five" instead of "three," so that it appeared on the face of the policy that the insurance was to continue for five years. After the three had

expired, but within the five, the property was burned, and an action at law was commenced on the policy to recover the loss; and this suit was brought to have the policy cancelled and the defendant restrained from prosecuting his action at law. The plaintiff introduced evidence indicating that the insurance was to be three years. The defendant gave evidence by the agent who effected the insurance that at the time the insurance was made for a five years risk, and the defendant paid such risk; that he recorded the risk at first on his books as a three years risk; he afterwards made another calculation and changed his record so as to make it a five years risk.

The Common Pleas Court, the presiding judge dissenting, cancelled the policy and enjoined the prosecution of the suit at law.

The Superior Court reversed the decree and dismissed the bill. Read, judge said:

"Relief will be granted in cases of written instruments only where there is a plain mistake clearly made out by satisfactory proof; but the qualification is most material, since it cannot fail to operate as a weighty caution upon the minds of all judges, and it forbids relief whenever the evidence is loose, equivocal or contradictory, or is in its texture open to doubt or to opposing presumptions.

Such is the language of Judge Story in his admiral Commentary on Equity Jurisprudence. The proof must be such as will strike all minds alike as being unquestionable, and free from reasonable doubt."

Judge Story, in sec. 152, 1 Eq. Jur., says: "In all such cases, if the mistake is clearly made out by proofs entirely satisfactory, equity will reform the contract so as to make it conformable to the precise intent of the parties; but if the proofs are doubtful and unsatisfactory, and the mistake is not made entirely plain, equity will withhold relief, upon the ground that the written paper ought to be treated as a full and complete exposure of the intent until the contrary is established beyond reasonsble controversy."

It was held by the Supreme Court of Wisconsin that it would be an extreme case which would justify the court in reforming or defeating a written instrument upon the uncorroborated testimony of a party thereto, even if such testimony was uncontradicted. (Harter vs. Christoph, 32 Wis. 245.)

In Hileman vs. Wright, 9 Ind. 126, it was decided that equity will relieve against a mistake in a sealed instrument upon parol evidence, but only upon the clearest proof of the *actual agreement and of the mistake.*

In Shattuck vs. Gay, 45 Vt. 87, it was held that

equity requires clear and full proof to warrant the reforming of a contract, and especially of a deed.

In Minor vs. Hess, 47 Ill., 70, it was held that the rule is well established in all cases, that where a writing is sought to be reformed, the evidence of the mistake must be clear and satisfactory, leaving but little, if any doubt, of the mistake.

In Weidebusch vs. Hartenstein, 12 W. Va. 760, this court held that to rescind a deed on the ground that by mistake it was made instead of a will, the proof must be very clear and strong, that the scriv ener through mistake drew a deed instead of a will.

In Manufacturing Co. vs. Coal Co., 8 W. Va. 406, the rule is laid down in the following strong language: "In a Court of Equity it may sometimes be proved that the deed was executed in mistake, and that in fact it embodies provisions different from those which the parties intended. But even in this court the deed is regarded as evidence so strong that only other equivocal evidence irrisistibly conclusive is sufficient to overthrow it."

This principal is supported by the following cases:

Snell vs. At F. & M. Ins. Co., 98 U. S. (8 Otto) 85-98.

Howland vs. Blake, 97 U. S., 624.

Jones vs. Johnson, 18 Howard, 150.

The land in controversy, as well as the 200 acres

claimed by complainant, were wild lands in the woods, in an original state of nature.

Neither Wm. H. Witten, nor any other person claiming under him ever had actual possession of the 200 acres, or any part thereof, nor of the land in controversy. (See answer of W. Scott Witten to question 15, on page 98 of the record

I earnestly and confidently submit that upon the proofs in this case the said deeds cannot be reformed, and that the land in controversy is no part of the 200 acres tract of complainant.

PROPOSITION III.

The alleged lost deed never existed; and the complainant did not have title to the 200 acres, more or less, at the time appellant acquired title to the land in controversy.

1st. There is no presumption in favor of its existence, because the 200 acres, more or less, was wild lands, in an original state of nature, and no one ever had actual possession of it under the alleged lost deed.

2nd. Robert D. Belcher's testimony is the only evidence in the case of its execution.

Wm. H. Witten, W. Scott Witten and the complainant all acknowledged and represented to the world that no such deed as the lost deed ever existed in the year 1881, by a recital in the deed exe-

cuted by the said Wittens to complainant, exhibit A No 3 with the bill, under which compiainant claims the said 200 acres, more are less ; that the said 200 acres, more or less, was a part of the 1100 acres conveyed to said Wm. H. Witten by Robert D. and Chrispianos Belcher and wives jointly, by deed dated Dec. 23d, 1852. This deed was placed on record to give notice to the world of their claim to the said land It will only require a glance at the map of Sinnett and of the complainant himself to see that the deed referred to did not embrace the 200 acres. They do not now pretend that it embraces it.

The circumstances detailed above in connection with the entry of the 200 acres on the land book ; the transfer of the 200 acres from another tract of Robert D. Belcher, as this land, and the long acquiescence of the parties, their silence and failure for such a great length of time to take steps to establish the deed, raise such strong presumptions against it that the testimony of one witness is not sufficient to overbalance them, especially when he is interested in establishing the deed.

3d. The testimony of Robert D. Belcher, this only witness, is unsatisfactory. He says that the lost deed, the deed of Dec. 23d, 1852, from him to Witten for the 200 acres, and the deed from him and Chrispianos Belcher, jointly, to Witten for the 1100 acres, were all prepared by Witten and ex-

ecuted at the same time and acknowledged before the same officer. Why did they prepare and execute three deeds in order to convey to Wm. H. Witten two adjoining tracts?

The complainant's counsel saw that this would not do, and he undertook to get the witness to explain himself out of this inconsistent position, and to contradict what he had stated in the beginning of his deposition, by plying to him the 23d question and getting down an answer to it, in the language of the counsel himself, which is evident from a comparison of the language used in that answer with the language used in his former answers, and also with the allegations of the bill.

No one was present to cross-examine this witness for appellant and see that the deposition was fairly taken. This last answer was doubtless extorted from the old man by worrying him with repeated questions and much discussion, till he did not know what the answer as written really contained.

4th. It is a presumption of law that if complainant had taken the testimony of Chrispianos Belcher, the alleged grantor, Wm. H. Witten, the scrivener, and the officer before whom the deed is alleged to have been acknowledged, they would all have been against him

I submit that it was not only his privilege to take

the testimony of these persons, but it was his duty to do so.

In Hefflebower v. Detrick, 27 W. Va., page 23, the court says: "The first reflection that strikes the mind in the examination of this case is that as the defendant on February 22, 1883, filed his plea of the statute of limitation, and the plaintiff on the same day filed his first and second special replications thereto, on which the defendant then took issue, he neither by his plea of the statute of limitations, nor in either of the conversations with Stouffer in 1882, or with Kable in 1883, alleged or claimed that he had not made said contract in Kabletown, in this State; and that if it was true that it was not in fact made in this State, to be performed here, or that he was not in fact in this State when it was made he had the evidence within himself, and he was a competent witness to prove it, and having failed to remove this doubt, it is to be presumed that he could not truthfully do so; and according to well-settled principles the court, upon a demurrer to evidence, will resolve this presumption against him."

And the court in the same case, 27 W. Va., 17, 8th point in the syllabus, states the law as follows:

"Where a party has in his possession or under his control evidence, by the introduction of which at the trial he would be able to render certain a fact

material to his success, which is otherwise left in doubt, and he withholds such evidence, the court will, upon a demurrer to the evidence introduced by his adversary, presume that the fact was against him."

1. Greenleaf on Evidence, sec. 82.

2. 'Waits' Actions and Defenses, 515.

Felton vs. Pitman, 14 Ga., 530.

5th. Robert D. Belcher says that some time after the deed was made he and Witten were looking over some of his brother Obediah Belcher's old papers and found the deed, and Witten said to him he thought the deed had been recorded. He then gave it to Witten and gave him the money to have it recorded and has not seen it since. (See page 138 of the record.)

Why did they not take Witten's deposition to prove the deed? He had prepared it and witnessed its execution and it has been traced to his possession. There are mysteries that will not bear the light of day. So anxious were they to avoid taking this old man's deposition that they forced counsel for defendant to admit that search had been made for the deed and it could not be found, in order to at last get a trial of the case in the court below. (See page 88 of the record.)

6th. The complainant was dependant alone upon

the lost deed for title to the 200 acres, more or less, till April 5th, 1885, the date of his deed from Chrispianos Belcher, which was not executed until after the appellant's rights accrued.

PROPOSITION IV.

The correction of the lost deed and the deed of Dec. 23d, 1852, from Robert D. Belcher to Wm. H. Witten, involves the enforcement of an alleged oral agreement, within the Statute of Frauds, and cannot be corrected.

The Code of West Virginia, chapter 98, page 698, provides as follows:

"No action shall be brought in any of the following cases: * * * * * * * * * * * Sixthly. Upon any contract for the sale of real estate, or the lease thereof, for more than a year; * * * * * * Unless the promise, contract, agreement, or some memorandum or note thereof be in writing and signed by the party to be charged thereby or his agent."

The correction of the said deeds as asked in the bill is an enlargement of them, so as to embrace more land than they now embrace. This correction is asked to be made upon oral testimony, taken for the purpose of showing that the grantors in said deeds sold the land in controversy and intended to

embrace it in the deeds. It is not pretended that there was any written memorandum of the sales, or of the contract.

In the case of Glass v. Hulbert, 102 Mass., 24, 29, a case in which this same question was involved, in the light of a careful review of the authorities, the court said:

"Such a reformation not only requires a description of the subject matter of the sale different from the express terms of the oral contract, but would enlarge the effect and operation of the deed as a conveyance. It involves the transfer of the legal title to land not covered by the deed already given. It requires a new deed to be executed and delivered by the defendant to the plaintiff. Whether that deed shall embrace the entire subject of the alleged contract of purchase, with a corrected description, to make it conform to facts and abuttals as they were represented to be, or merely convey the seventeen acres omitted from the deed already given, the order for its execution will enforce the specific performance of a contract for the sale of lands for which there exists no memorandum, note or other evidence in writing signed by the party to be charged therewith. As to the seventeen acres in dispute, the obligation to convey them rests solely in the oral contract. The defendant denies any contract which includes them. The plaintiff seeks

to establish such a parol contract by parol evidence and enforce it. The deed itself furnishes no means of making the correction sought for, and no evidence of the contract relied upon for this purpose; nor is it in any sense an acknowledgement of the substance of the alleged oral agreement. * * * * * It makes no difference whether the want of a writing was accidental or intentional, by way of refusal, *or by reason of mutual mistake.* * * * * * * From the oral agreement there can be derived no legal right, either to have performance of its stipuations or written evidence of its terms."

The same proposition was ably discussed and decided by the Supreme Court of Rhode Island in 1889, in the case of Macomber v. Peckham, 17 Atlantic Reporter, 910, after a careful review of the authorities, both American and English. The case of Glass v. Hulbert is there referred to as one of the leading cases on the subject, and the same doctrine affirmed. Careful attention is respectfully solicited to these cases and the cases there cited.

PROPOSITION V.

Complainant cannot obtain a reformation of the deed from Robert D. Belcher to Wm. H. Witten as between him and appellant, because appellant is neither a party nor privy thereto.

A deed can only be reformed between parties

and their privies.

I. Story's Eq. Jur., sec. 165.

Cross v. Bean, et. al., 17 Atlantic Reporter, 710,

Baskins v. Calhoun, 45 Ala., 582.

Adams v. Stephens, 49 Me., 362.

Rhodes v. Outcalt, 48 Mo., 367.

Simpson v. Montgomery, 25 Ark., 365.

Warwick v. Warwick, 3 Atk., 295.

PROPOSITION VI.

The mistake sought to be corrrcted in the said deeds are unilateral mistakes and cannot be corrected

I do not concede there was a mistake, but I insist the proof does not even tend to show a mutual mistake. They managed by some means unknown to appellant to get Chrispianos Belcher to execute, in April, 1885, a deed to complainant, in which they inserted certain recitals, but they are not evidence against appellant; it only makes their failure to take his deposition more suspicious, and raises stronger presumptions in favor of appellant. If he would have sworn what he said in the deed, they would have taken his deposition.

It must clearly appear that the mistake was mutual.

1 Story's Eq. Jur., sec. 164 (e)

Cross, et. al., v. Bean, et. al., (Me.) 17 Atlantic Reporter, 710.

PROPOSITION VII.

Complainant's claim is stale.

Complainant and those under whom he claims have slept upon their rights about forty years since the alleged mistake was made. When the alleged deed was lost, nowhere appears; but it has been traced to the possession of Wm. H. Witten; he knows when it was lost. Why don't he tell us? He is silent, and the presumption is against him; it has been lost more than thirty years. Why did not Wm H. Witten bring suit to correct these mistakes and establish the lost deed years ago. He did not even go to Robert D. and Chrispianos Belcher and ask them to correct them and execute a supplemental deed.

Complainant makes a feeble effort to excuse this want of diligence; he says we did not know our title was disputed. Ah! Appellant and its vendors, including Chriapianos Belcher, did not know their title was disputed. No man had ever set foot on the land to reclaim it from its original forests till appellant made the first improvements upon it.

But soon after appellant had begun the improvement of its land, complainant having had his agents surveying around the vicinity and plotting "*Map*

of property owned by Joseph I. Doran and others, on Simmons' Creek and vicinity, as shown by old deeds," (See map at page 1 of the record), heard of Miller's line, and concluded that as it was "shown by old deeds," he might establish it up Simmons' Creek, &c., and hold appellant's land.

I most respectfully submit that a Court of Equity will entertain no such demand.

In Justice v. English, 30 Gratt, 576, the court said:

"Equity, in obedience to the law, applies the Statute of Limitations to all demands of a strictly legal nature, and in equitable demands by analogy it applies the same bar that the statue fixes for legal demands of a like character, and upon its own inherent doctrine not to entertain stale or antiquated demands, and not to encourage laches and negligence, will sometimes in cases not barred by the statute refuse to interfere after a considerable lapse of time from considerations of public policy, from the difficulty of doing justice, when the original transactions have become obscure by time, and the evidence may be lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *vigilantibus, non dormientibus, jura subveniunt.*"

Snell v. Atlantic F. & M. Ins. Co. 98 U. S.

(8 Otto) 85-98.

1 Barton's Chy Practice, 88, 90.

PROPOSITION VIII.

The appellant is a purchaser of the land in controversy, for valuable consideration, without notice of the alleged lost deed.

A deed is void as to subsequent purchasers without notice till recorded. Chapter 74, sections 4 and 5 of the Code of West Virginia provide as follows:

"4. Any contract in writing, made in respect to real estate, or goods and chattels, in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, shall, from the time it is duly admitted to record, be, as against creditors and purchasers, as valid as if the contract was a deed conveying the estate or interest embraced in the contract."

"5. Every such contract, every deed conveying any such estate or term and every deed of gift, or deed of trust, or mortgage, conveying real estate or goods and chattels, shall be void as to creditors and subsequent purchasers for valuable consideration without notice, until and except from the time that it is duly admitted to record in the county wherein the property embraced in such contract

or deed may be."

Cox, Exor, vs. Wayt, et. al., 26 W. Va., 807.

A purchaser is not affected by the record of a deed made by any person under whom his title is not derived.

Chapter 74, sec. 10, of the Code of West Virginia provides as follows:

"10. A purchaser shall not, under this chapter, or seventy-five, be affected by the record of a deed or contract made by a person under whom his title is not derived, nor by the record of a deed or contract made by any person before the date of a deed or contract made to or with such person, which is duly admitted to record, and from which the title of such person is derived."

Hoult vs. Donahue, 21 W. Va., 294.

A deed in which the land conveyed is defectively described is no notice to a subsequent purchaser, although actually recorded.

Vawter, et. al., &c. v. Watts Exors. &c. et. al., 3 Gratt., 494.

There is no evidence in the case tending in the slightest degree to show that appellant or its vendors had notice of such a deed. There was nothing to even suggest its existence. Complainant has the presumption to charge appellent with notice; yet, neither he, Wm. H. Witten, nor W. Scott Wit-

ten, the witness who testified so wisely in this case, knew in 1881 that they claimed the land under such a deed.

The deed from Wm. H. Witten and W. Scott Witten, et. al., to complainant for 200 acres, more or less, page 12 of the record, recites as follows:

"Do grant unto the party of the third part, his heirs and assigns, all that certain tract, piece or parcel of land situated on the south side of the dividing ridge and on Simmons' Creek, in Mercer County, aforesaid, and containing 200 acres, more or less, bounded * * * * * *being the eastern part of the said large tract of eleven hundred acres, which Robert D. Belcher, et. ux. et. al., by deed dated Dec. 23d, 1852, and recorded in Mercer County, in Deed Book No. 3, page 523, &c., granted and conveyed unto the said W. H. Witten in fee."*

The deed conveying the eleven hundred acres to W. H. Witten will be found on page 10 of the record.

Wm. H. Witten, the man who wrote the lost deed, W. Scott Witten, the famous witness, and the complainant, represent to the world in their solemn deed of record that they do not claim the land under the lost deed, but claim it under another title, which does not cover the land at all. (For location of the eleven hundred acres see Surveyor Sinnett's

map, at page 88, and complainant's map, at page 1, of the record.)

This is monstrous! They offer not one word of explanation. If appellant had gone to the records and examined this deed, under which the complainant claims, (It is Ex. A. No 3 with the bill), it would have assured it that no such lost deed existed or ever existed, and that the complainant had no title to the land in controversy, and not even to the actual 200 acres. The idea of a man coming into a Court of Equity, charging fraud and notice of an alleged deed lost thirty years ago, claiming under such a deed as this! It is repulsive to every moral sense of justice.

PROPOSITION IX.

The complainant has now no title to the 200 acres, more or less; the title is vested in the State of West Virginia.

Article XIII., sec. 4, of the Constitution of West Virginia, provides as follows:

"4. All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited, or escheated to the State of Virginia, or this State, * * * * * not redeemed, released, transferred, or otherwise disposed of, the title

whereto shall remain in this State till such sale as is hereinafter mentioned be made, shall, by proceedings in the Circuit Court of the county in which the lands, or a part thereof, are situated, be sold." &c.

Article IX., sec. 5, of the first Constitution of West Virginia, which was succeeded by the one now in force, provides as follows:

"5. All lands in this State heretofore vested in the State of Virginia by forfeiture, or by purchase at the Sheriffs' sales for delinquent taxes, and not released or exonerated by the laws thereof, or by operation of the preceding section, may be redeemed by the former owners by payment to this State of the amount of taxes and damages due thereon at the time of such redemption, within five years from the day this Constitution goes into operation; and all such lands not so released, exonerated or redeemed, shall be treated as forfeited, and proceeded against and sold as provided in the third section of this article."

An Act passed by the General Assembly of Virginia, April 12th, 1852, Acts 1852, chapter 18, page 187, provides as follows:

"Be it enacted by the General Assembly, That the owner of every tract of land lying west of the Alleghany Mountains upon which taxes and damages were released by the second section of the said act of assembly, passed on the tenth day of

March, in the year one thousand eight hundred and thirty-two, or which was exonerated from taxes and damages by the second section of the said act, passed on the nineteenth day of March, eighteen hundred and thirty-two, and *which has been omitted from the books of the Commissioners of the Revenue of the proper county for any year or years since the year eighteen hundred and thirty-one*, shall, in case such tract of land be still off such books, cause the same to be entered in the land book of the Commissioner of the Revenue of the county wherein the same or the greater part thereof shall lie; and whether such tract of land be still off such books or not, shall cause to be charged thereon by such Commissioner of the Revenue such taxes for each of the years since eighteen hundred and thirty-one, that the same may have been omitted from such books, as would have been chargeable thereon, if the same had been on such books for such years, with interest on such taxes at the rate of six per centum. per annum from the 15th day of December, in the year in which the same would have been so chargeable, (for which purpose an assessment shall, if necessary, be made by such commissioner, having due regard to the assessed value of contiguous lands), and shall, before the first day of July, eighteen hundred and fifty-three, actually pay to the Sheriff of the county, on the books whereof such charges shall be made, or into the Treasury, upon

the certificate of the first auditor, all such taxes, with such interest thereon; and, upon the failure of such owner so to do, every such tract of land, not now in the actual possession of him or his tenant, shall become absolutely forfeited to, and the title thereto be completely vested in the Commonwealth, on the said first day of July, eighteen hundred and fifty-three."

The said tract of 200 acres, more or less, was part of 1500 acres, conveyed to Chrispianos Belcher by Obediah Belcher in 1842. (See deed on page 43 of the record.) The bill says he was the owner of it in 1844.

The 200 acres, according to the testimony of Robert D. Belcher, was not conveyed, if at all, to him till Dec. 23d, 1852.

Samuel P. Pearis, Clerk of Mercer County Court, in answer to question No. 2 on re-examination, page 162 of the record, says:

"There were no lands charged to Chrispianos Belcher on said land books prior to the year 1850," meaning the land books of Mercer County.

The answer of the same witness to question No. 1 on cross-examination, page 161 of the record, shows that Robert D. Belcher was never charged on the land books with the said 200 acres; but that it was transferred to Witten as part of the Robert

D. Belcher 1500 acres, situated entirely south of it, and of which it was not part.

The 200 acres was never entered on the land books in the name of Wm. H. Witten, or anyone else till 1854. (See extracts from land books filed with deposition of S. P. Pearis, Clerk, page 142 of the record.)

That portion of the Chrispianos Belcher 1500 acres which forms part of the 1100 acres conveyed to said W. H. Witten by Chrispianos and Robert D. Belcher, by the joint deed of Dec. 23d, 1852, was never entered on the land books of Mercer County in the name of either of the said Belchers, nor said Witten, till 1854. (See page 142 of record.)

The bill admits that Chrispianos Belcher owned the whole tract of 1500 acres from 1842 till 1844; it was not on the land books for those years.

No part of the 1500 acres was ever on the land books in Chrispianos Belcher's name till 1854, (See page 156 of the record), when 650 acres and 200 acres, parts of it, were entered on the land book, with back taxes from 1843.

It affirmatively appears, from the proofs in the record, that Chrispianos Belcher was the owner of more than 1000 acres of the 1500 acres, in one body in which the 200 acres claimed by complainant was included, till Dec. 23d, 1852. (See complainant's map at page 1 of the record.)

The complainant's 200 acres is clearly shown to have been forfeited, and vested in the Commonwealth of Virginia under the said act of 1852; and by virtue of the constitutional provisions above referred to, is now vested in the State of West Virginia.

It was the duty of Wm. H. Witten to have had the 200 acres entered on the land books in conformity with the said act, and to have paid all back taxes on it before the first day of July, 1853; he did not do it and the land was forfeited, with the balance of 1500 acres, upon which the taxes were not paid in conformity to that act.

The omission of the 1500 acres from the books in 1842, 1843 and 1844, or any one of those years, was sufficient to forfeit the whole tract, since the taxes were not paid in conformity with the said act of 1852.

The complainant took upon himself the burden of showing that his 200 acres was not forfeited; he filed with this bill a copy of all the record, in the proceeding of George W. Belcher in the Circuit Court of Mercer County, to redeem the land in controversy, in which is the report of a sworn commissioner of the court, who investigated the question of forfeiture and reported that the land was forfeited, and his report was confirmed by the court. He attacks all this as false and asks the court to set

it aside. He has proved the truth of the commissioners's report, showing the forfeiture, and not a scintilla of evidence could be produced to impeach it.

Granting only for the arguments sake that the land in controversy is a part of the 200 acres, it was forfeited, and George W. Belcher got title to it, under the deed of R. B. McNutt, Commissioner of School Lands of Mercer County, made in pursuance of the order of the Circuit Court of said county. (See page 44 of the record.)

Complainant is bound to set aside this deed before he can recover, and before he can possibly do so, he must show that his land was not forfeited.

The complainant contends that he had no notice of the petition of George W. Belcher to redeem, nor of the proceedings upon it, and that the proceeding was irregular and void.

I respectfully submit that the complainant had no right to be a party to that proceeding and he has no right to inquire into its regularity. It is a matter in which the State of West Virginia is alone interested.

In the case of McClure vs. Maitland, 24 W. Va., page 561, the court said, in the third point in the syllabus:

"3. The former owner having no interest in the land or the proceeding for the sale in the Circuit

Court, and he consequently cannot appeal to this court."

See also Auvil vs. Iaeger, 24 W. Va., 583

It is not necessary that there should be a proceeding pending for the sale of the land before a claimant is entitled to file his petition to redeem.

In the case of McClure v. Mauperture, 29 W. Va., 643, the court decided as follows:

"These proceedings were not intended to settle the title to lands, and when they are ended the title of all original claimants remain just what it was when the proceedings commenced. If the land did not belong to the State by forfeiture, or otherwise, when these proceedings were instituted, a sale of it made under a decree of the court could confer no title on the purchaser. But if the title was by forfeiture, or otherwise, absolutely in the State, and *the proceeding terminated as in this case, with one claiming to have been the former owner of the land, paying into court, with its consent, all costs, taxes and interest due at the time, calculated as the law directs, and an order being made releasing all former taxes on said land, and ordering that no sale thereof be made,* this could not effect the title of any other claimant to said land, whether he was improperly made a party to the proceedings or not. It would only operate on the title of the State, probably, so far as it was derived from the person, who

paid up the costs, taxes and interest aforesaid, and would release such title to such person; but I do not suppose that such a decree would operate to transfer to such person even the title of the State, so far as it was derived from any other claimant of the land; *but such other claimant would, it seems to me, have a right to offer to the court, as did the former person claiming to be the owner, all costs, taxes and interest due at the time the offer might be made, calculated as prescribed by the Statute; and thereupon a decree in his favor would be made, stating the amount paid, as well as the character of his claim, which order would operate as a release to him of all former taxes on the land.*" The petition of George W. Belcher, page 37 of the record, was a petition to redeem. I have shown that he had the right to file this petition, whether there was a proceeding pending for the sale or not. The Commissioner of School Lands was a party to this petition and appeared; the petition showed all that was necessary for the petition of the Commissioner of School Lands to show for a sale of the land, and as the court saw that it was proper to make sale of the land to George W. Belcher, instead of allowing him to redeem and cause it to be conveyed to him as was done, it is not a matter of which complainant has a right to complain. The land belonged to the State, and she conveyed all her title to said Belcher,

and he is the absolute owner of the land, no matter where the State got her title.

Appellant is in possession under the said deed of the Commissioner of School Lands, and complainant seeks to set it aside as a cloud on his title; he had no right to be a party to the said proceeding, in which the deed was ordered to be made, and cannot obtain relief on the ground of irregularities; he must prove clearly that his land was not forfeited.

But there is absolutely no proof in the record that there was not a proceeding pending for the sale of the land when the petition of George W. Belcher was filed.

It will be remembered that complainant claims title under Chrispianos Belcher and that the land was forfeited before the alleged lost deed was executed

Now, in conclusion, I respectfully submit that if the representatives of the complainant, who is a mere trustee for others, instead of all this false clamor and false charges of fraud, had had the honesty of George W. Belcher, to have come into the Circuit Court of Mercer County and paid the taxas on their 200 acres of land and got an order releasing it from the forfeiture, while they were plotting "*Map of property owned by Joseph I. Doran and others, on Simmons' Creek and vicinity, as shown by old deed*," they might have been in a better position.

Is it more lawful for one man to buy and survey lands than another? Away with such stuff!

These sainted representatives of the complainant, who are so swift to charge others with fraud, go all the way to the State of Missouri, with full knowledge of the conveyance of the land in controversy by Chrispianos Belcher to George W. Belcher, and by some means unknown to appellant, which, doubtless, will never be known to the public if they can avoid it, induced Chrispianos Belcher to convey part of the very same land to complainant. This deed will be found on page 27 of the record, and bears date April 2d, 1885, after appellant's rights accrued and cannot affect the title of the appellant.

An agteement of the parties themselves that there is error, and a deed made in pursuance of that agreement to correct it, cannot affect the rights of third persons.

Johnson vs. Jones, 1 Black, 209.

The final decree is manifestly erroneous for still another reason. The decree sets aside in toto all the deeds under which appellant claims, when the whole case shows plainly, as well by the admissions of complainant as by the proof, that the land in controversy is not all the land embraced in the said deeds and that appellant's title to part of the land embraced in said deeds is not disputed and not involved in this case.

These views are most respectfully submitted in full confidence that the decree of the court below will be reversed and complainant's bill dismissed, with proper costs to appellant.

A. W. REYNOLDS.

Appendix.

The counsel for complainant, James H. Ferguson, admitted in the court below that the deed from Robert D. Belcher to W. H. Witten does not embrace the land in controversy, and insists that it is necessary to correct the description set forth in order that it may embrace the land in controversy. He says, on page 49 of his brief in the court below: "If a straight line from the two birches to the six chestnuts be run, as contended for by defendants, a part of the land intended to be conveyed will be left out of the deed; AND IF THE LINE BE RUN UP SIMMON'S CREEK WITH MILLER'S LINE TO THE END THEREOF, THE DEED WILL INCLUDE LAND NOT INTENDED TO BE CONVEYED BY IT. And, therefore, it is not only necessary, but right and proper, that the mistake in the calls of this deed should be so corrected as to run from the two birches up the main Simmon's Creek, with its meanders, to the mouth of the middle fork thereof; and thence up the left hand fork of said creek, with its meanders, to the line of Miller's survey, and with that line to the six chestnuts."

Again on pages 50 and 51 of his said brief, he says: "How is the line of R. D. Belcher's deed to Witten to be run from the two birches, the beginning corner, to the six chestnuts according to the deed itself? It can't be run by the course called for, because, as we have seen, that call, at the very start, leaves Simmon's Creek and runs away from the six chestnuts. So that the course called for must, at the outset, be disregarded. It can't be run by the distance called for, because, as we have seen, that distance is but little more than one-third of the distace from the two birches to the six chestnuts, on a straight line from the one to the other. And we can't reject both course and distance and run a straight line from the two birches to the six chestnuts, because that line would not run with Simmon's Creek and Miller's line, but would leave this creek and Miller's line at the start, and would not locate our land on "Simmon's Creek" at all. Therefore, there is but one way that we can run this line according to the calls of the deed, which is to run up the creek "with Miller's line" to one or the other points hereinbefore indicated. BUT TO RUN UP THE CREEK WITH MILLER'S LINE TO THE END THEREOF, on one hand, and to run a straight line from the two birches to the six chestnuts on the other, WOULD BE EQUALLY CONTRARY TO THE CONTRACT BETWEEN THE PARTIES, and therefore it becomes necessary to call in the aid of a court of equity to correct the mistake in the calls of the deed in question according to the intent and agreement of the parties."

Office Supreme Court U. S.
FILED,
NOV 4 1891
JAMES H. McKENNEY,
CLERK

84

Supreme Court of the United States.

THE SIMMONS CREEK COAL COMPANY, *et al.*,

APPELLANT,

vs.

JOSEPH I. DORAN,

APPELLEE.

Brief of James H. Ferguson, of Counsel for Appellee.

DAILY GAZETTE BOOK AND JOB ROOMS PRINT, CHARLESTON, W. VA.

Supreme Court of the United States.

THE SIMMONS CREEK COAL COMPANY, *et al.*,
APPELLANT,

VS.

JOSEPH I. DORAN,
APPELLEE.

Statement of the case.

About the year 1844, Robert D. Belcher bought of Chrispianos Belcher 800 acres of land on Simmons creek and other waters of Bluestone river, then in Mercer county, Virginia, now West Virginia. This tract of land, as shown by the papers and evidence in the case, was bounded west by a line running from Bluestone river N. 26½ west, the reputed line of a survey made for Willson Cary Nicholas of 500,000 acres; north, by a line running N. 55 E. from the Willson Cary Nicholas line to the left hand fork of Simmons creek; east, by Simmons creek from the point last indicated to two birches on the bank of main Simmons creek, on the north line of R. D. Belcher's 1,500 acre tract; and south, by that line back to the W. C. Nicholas line. R. D. Belcher took possession of this land and held and occupied it, as far as it was susceptible of occupation, and claimed it to the extent of said boundaries, from the date of his purchase to December, 1852. By the contract the land was to be conveyed to him by a deed with general warranty. But

a dispute arose in the country as to the true west line of the W. C. Nicholas survey, caused by a line run by Philip Lybrook, a surveyor, much further east than that by which R. D. Belcher had bought the 800 acres, and Chrispianos Belcher then refused to convey any part of the 800 acres lying west of the Lybrook line with general warranty. It was then agreed between R. D. Belcher and Chrispianos that he should convey to R. D. Belcher that portion of the land lying east of the Lybrook line, with general warranty, and that they would wait as to the land west of that line until the disputed line was settled. And in accordance with this agreement Chrispianos did convey to R. D. Belcher all of the said 800 acres lying east of the Lybrook line and between *that line and Simmons creek.* The exact date of that deed is uncertain, R. D. Blecker thinks it was made Dec. 23, 1852, but in this he is probably mistaken. The deed was lost and never recorded. On December 23, 1852, Robert D. Belcher sold and conveyed the same lands so conveyed to him by Chrispianos Belcher, to William H. Witten, or, at least, he sold and *attempted* to convey the same lands to Witten. And this lost deed from Chrispianos Belcher to Robert D. Belcher, and R. D. Belcher's deed to Witten, are the source of the Appellee's title to the lands in controversy in this suit. On October 18, 1884, Chrispianos Belcher conveyed to George W. Belcher a tract of land of 75 acres more or less on Simmons creek, which it is claimed by the Appelants covers a part of the land claimed in this suit by the Appellee, and this deed is the source of the title claimed by the Appellant, The Simmons Creek Coal Company, to the lands in question, and so both parties claim title to the land in question under Chrispianos Belcher.

Object of the Suit.

The object of this suit is, (1) To set up the lost deed from Chrispianos Belcher to Robert D. Belcher; (2) To correct certain mistakes and omissions in the deed from Robert D. Belcher to William H. Witten; (3) To set aside and vacate all the deeds executed by George W. Belcher, or others, conveying any part of the land claimed by the appellee, under or by virtue of which the said company mediately or immediately claims to title to the lands in question, as clouds upon the title of the appellee, to said lands so claimed by him; And (4) To enjoin and restrain the commission of further waste on the lands in controversy by the appellants, their agents, servants

and all others pending this suit. The first question to be determined, as it seems to me, is the

Proper Location of the Witten Line.

The description and boundary lines of the tract of land mentioned in the deed from Robert D. Belcher to William H. Witten are as follows: "All that tract of land containing, by estimation, two hundred acres, be the same more or less, lying in Mercer county, on Simmons creek, waters of Bluestone and as follows, to-wit: Beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land, thence up said creek with Miller's line, S. 55 W. 120 poles, to six chestnuts, corner to Miller's survey, and with the same S. 35 E. 310 poles to a double and single poplar, corner to said Belcher; and with the same N. 40 E. 250 poles to the beginning."

The description and boundaries of the tract conveyed by Chrispianos Belcher to George W. Belcher are as follows: "A certain tract or boundary of land supposed to contain seventy-five acres, be the same more or less, lying and being in the county of Mercer, State of West Virginia, on the waters of Simmons, a branch of Bluestone river, and being a part of a survey purchased by Obediah Belcher of Jas. Hector, in the year 1842, and a portion of a tract deeded by Obediah Belcher, to Chrispianos Belcher and bounded as follows, to-wit:

"Beginning at two birches on the west bank of Simmons creek, corner to William H. Witten; thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge; thence N. 50 E. 112 poles to a whiteoak and two pines on a branch of Simmons' creek, corner to Witten and Graham Payne tract; thence N. 85 E. 134 poles with the Payne line to two pines and a white-oak on another branch of Simmons' creek, corner to 400 acres deeded by Chrispianos Belcher to Obediah Belcher; thence down Simmons creek with the meanders thereof to the beginning."

And the question now returns,

Where is Witten's Line?

And for this we must look, first, to the deed from R. D. Belcher to Witten. Witten's line, as called for in that deed, is: "Beginning at two birches on Simmons creek, corner to Chrispianos Belcher's land; thence up Simmons creek with Miller's line, S. 55 W. 120 poles, to six chestnuts, corner to Miller's survey." There are five things mentioned in this call to be considered in determining

where this line is, (1) The two birches: (2) Simmons creek; (3) Miller's line: (4) The line S. 55 W. and, (5) The six chestnuts. The contention of the appellee is, taking all these into consideration, that Witten's line runs from the two birches, up Simmons' creek, *with* Miller's line, to the mouth of the middle fork; thence up the left-hand fork to the point where the line N. 55 E., running from the W. C. Nicholas line, reaches that creek, and with that line reversed, S. 55 W. to the six chestnuts. And the contention of the appellants is, that the Witten line, as called for in that deed, is, by operation of law, at least such was their contention in the court below, a straight line from the two birches to the six chestnuts, thus running away from Simmons creek, and away from Millers line and away from the line S. 55 W., instread of running with them. This contention we submit, can not possibly be maintained, no matter whether the legal effect of the calls of R. D. Belcher's deed to Witten would compel the line from the two birches to the six chestnuts to be run, as contended for by the appellee or not. And if the court should be of the opinion that these calls are not sufficient of themselves to *compel* this line to be run, as contended for by the appellee, then, under the evidence in this case, the deeree of the court below, correcting and amending these calls so as to conform to the intention of the parties at the time of the execution of said deed, was correct and should he affirmed. And now let us look to the evidence in support of that decree.

Deposition of William Miller.

This deposition is found in the printed record, pages 170 to 174.

This witness says he resided in Mercer county, in the vicinity of these lands, from 1843 until about eight years before the date of taking his deposition, March 30, 1886, except about two years he lived in Tazwell county; that he knew all the Belchers and Witten, and that he was brother-in-law to Chrispianos and George W. Belcher; that R. D. Belcher was the uncle of his wife, and that Obadiah Belcher was her father, and that he was the same "Miller" referred to in the deed from Robert D. Belcher and wife to W. H. Witten.

In answer to the 6th question asked him by the plaintiff's counsel, in reference to the land claimed by him, he says:

"I claimed to own six hundred acres, which I purchased from Obadiah Belcher, lying between Flipping creek and the main Simmons creek. When I bought this land, the six hundred acres embraced what is now known as the Henry Sadler land. I had a title-

bond for this land from Obadiah Belcher. This title-bond was afterwards destroyed or lost during the war. I also owned one hundred acres which I purchased from Obadiah Belcher and Chrispianos Belcher, lying at the head of the west fork of Simmons creek, and north of said Witten land."

In his answer to the next question he says his father-in-law cut him short by selling the Sadler land off the 600 acres, and George W. Belcher got a deed from Chrispianos to his wife, for 300 acres of the 600 acres, and also to the 100 acres; that as soon as he found it out he brought suit against George W. Belcher and his wife in regard to it, which was afterwards compromised.

The attention of the court is now called to question 9, on page 171–172, thus: "Please examine map of the lands on waters of Simmons and Flipping creeks, made from old deeds, marked property, of Joseph I. Doran *et al.*, and file the same with your deposition and point out on said map the west and north lines of your 600-acre purchase, from Obadiah Belcher, and the south line of said 100-acre tract."

He answered as follows:

"I have no noted place to tell you. The west line ran up to Obadiah Belcher's home place, on the middle fork of Simmons creek, commencing at the two birches on the main creek. The north line was the marked line between my 600-acre tract and Obadiah Belcher's home tract. The south line of my 100-acre tract ran from the six chestnuts to Simmons creek, to Payne's line, or Payne's corner."

In this connection, attention is called to the map referred to in the question at page 172 of the printed record. This map shows the boundary lines of Miller's 600 acres, as follows: Beginning at the two birches on Simmons creek, the beginning corner of Witten's line, and running thence up and with main Simmons creek to the forks; thence up the middle fork of said creek to the line of Obadiah Belcher's 400 acres, called his "home place," and with that line to two pines and a poplar on Flipping creek, "corner of William Miller;" thence down Flipping creek to the north line of Robert D. Belcher's 1,500 acres, and with that line to the beginning. The plat shows the location of the 300 acres conveyed to Mary E. Belcher, bounding partly on Flipping creek, and also the land conveyed to Sadler, bounding partly on main Simmons creek. It also shows the location of Miller's survey of 100 acres, mentioned in the deed of R. D. Belcher to Witten. It is bounded as laid down on the plat, by the lines shaded yellow and marked "Christpianos Belcher to Mary E.

Belcher, 100 acres," &c. (see Miller's deposition, already quoted)

And by reference to the map in the record at page 2, it will be seen that the 300 acres, conveyed by Obadiah to Mary E. Belcher, took in William Mlller's house.

This evidence taken altogether, standing as it does, wholly uncontradicted, proves beyond all question that "Miller's line" was main Simmons creek from the two birches to its forks, and from there to Obadiah Belcher's line, and therefore that from the birches to the forks of the creek, Miller's line and Witten's line are the same, and there is no possible way to avoid the running of Witten's line up main Simmons creek to its forks, and when we get there, the question is, *how* to reach the six chestnuts from that point. Shall we run up this middle fork to Obadiah Belcher's line, and then by a straight line to the six chestnuts? or, shall we run up the left hand fork of the creek to the point where the line running from the W. C. Nicholas line N. 55 E. reaches that creek, and with the course of that line reversed S. 55 W. as called for in Witten's deed, to the six chestnuts? This question is, we think, sufficiently discussed in another form.

Deposition of Robert D. Belcher.

This deposition is found in the record, pages 134 to 138. He gives his recollection of the facts of this case, in connected form on pages 137–138 of the record. And by reason of blunders and misprints on page 137, and for the convenience of the court, I here insert his statament in full. He says: "My recollection is that about the year 1842, my brother Obadiah and myself purchasrd from James Hector 4,000 acres of land situate on the waters of Bluestone, in the county of Mercer, State of Virginia. We agreed upon a division line, Obadiah taking about 2,500 acres, and I about 1,500 acres, as we supposed the amount to be. We had James Hector survey said land according to the agreed division; said land being a part of a 500,000-acre survey granted by the Commonwealth to Willson Carey Nicholas, from whom said Hector purchased the same. Obadiah Belcher sold 1,500 acres, part of the said 2,500 acres, to Chrispianos Belcher, and in the year 1844 or about that time, I purchased of Chrispianos Belcher about 800 acres of the said 1,500-acre tract, in consideration of one horse which I delivered him; said 800 acres then bounded on the East by Simmons creek, a tributary of said Bluestone, on the North by the lands of Obadiah Belcher and others, on the West by the line of said Willson Cary Nicholas survey, and

on the South by the said 1,500 acres surveyed to me by James Hector, as aforesaid. Sometime after I purchased said 800 acres of land, Chrispianos Belcher and myself were informnd that there was a controversy or dispute about the west line of said Nicholas' survey; that the line did not run as far west as James Hector claimed, and conveyed to Obadiah Belcher and myself; that one Philip Lybrook, a surveyor of Giles county, had some years before run the said line, and located the same as running from the little forks of Elkhorn to the sugar tree corner on the top of the Turkey Knob; thence running to or near by the six chestnuts to the mouth of Laurel creek. This line, as run by the said Lybrook, left out about three-fourths of said 800 acres, and about 500 acres of my said 1,500 acre tract, which said three-fourths and 500 acres some parties claimed was vacant land and subject to survey for grant and patent. When Chrispianos heard of this dispute about the line he declined to make me a general warranty deed to that part of the 800 acres in dispute, and not having his title bond for said land, I agreed to accept a general warranty deed for that portion not in dispute, and we agreed to wait to learn what would be done with the disputed part, or when said line would be established or located. Chrispianos Belcher thereupon made and delivered me a deed with covenants of general warranty for the undisputed part. This, I think, was in 1852, at fhe same date I made the deed to Witten. This land was supposed to contain 200 acres, more or less. The meets and bounds of the same were as follows: 'Beginning at two birchs on Simmons creek, thence up said creek, with the same, and leaving said creek upon the course south 55 west 120 poles to six chestnuts, mentioned, and thence with said Lybrook's line to a single and double poplar on the said division line between Obadiah Belcher and myself, and thence with the same to the beginning.' In the same year, 1852, I sold the said 200 acres of land, and all the land the title to which had been called in question, supposed to be about 1,100 acres, and as Chrispianos Belcher had not conveyed his part of said 1,100 acres to me, I joined him in conveying the same to Witten, and on the same day I conveyed to said Witten said 200 acres, or by the deed to him I intended to do so, which Chrispianos Belcher had conveyed to me. Sometime after making the conveyance to Witten he and I were looking over some old land papers of Obadiah Belcher and myself at the house of Obadiah Belcher, and we came across the deed from Chrispianos Belcher to me for the said 200 acres of land. Witten said to me, "I thought you had that deed recorded." I then gave him

the deed and money to have the same recorded and have not since seen it. When I conveyed the 200 acres of land to Witten, Miller owned, or claimed to be the owner of a tract of land lying east of and adjoining said 200 acres. The said line of said tract, believed and known then as Miller's land, run up Simmons creek from the two birches called for in my deed to the said Witten, and hence it was that it was in my said deed, the call was, from the two birches on Simmons creek; thence up said creek, with the Miller line. Wm. Miller got said land, I think, from Obadiah Belcher, his father-in-law, and finding that he could not pay for it, gave it up, and it was afterwards bought by Henry Sadler, as I understood. I owned said tract of 200 acres of land from about 1844 to 1852, when I conveyed it to Witten, and all that time I claimed that the east line run from the two birches up Simmons creek, with the meanders thereof, and that the north line left said creek with the course south 55 west 120 poles to the said six chestnuts—the chestnuts being a noted corner as well as the two birches —and I never heard this line called in question, until the railroad run there and the lands became valuable, quite recently. This was my understanding of it all the time, although the deed may convey it differently, I can't tell."

Now we have the evidence of the man who made the deed to Witten, corroborating all that Miller said as to Simmons creek being the west line of his land, and giving his reasons for calling for Miller's line in his deed to Witten. And he proves that his 800 acres, of which the 200 acres, conveyed to Witten was part, was bounded east by Simmons creek, and north by the line S. 55 W., or in other words, by the line running from the W. C. Nicholas line N. 55 E. to Simmons crsek. A plat of this 800 acres is laid down upon the maps filed by the appellee, and found in the record, and the attention of the court is called here to the map, found at page 2 of the record. By this map it appears plainly, that this 800 acres was bounded north by the line N. 55 E. from the Willson Cary Nicholas line, heretofore mentioned, to Simmons creek; east by Simmons creek; south by the line of a survey of 1,500 acres belonging to R. D. Belcher; and west by the line of the Nicholas survey. It is clearly shown by the evidence in this cause, that this 800 acres at the time R. D. Belcher purchased it, was considered almost worthless. In his evidence quoted, Belcher says the consideration was "one horse which I delivered to him," meaning Chrispianos Belcher. And turning to the deed of James Hector to Robert

Belcher for 1,500 acres of the same Willson Cary Nicholas survey, dated May 11, 1842, it will be seen that the consideration of this 1,500 acres was $100.00, payable in one, two and three years. The north line of this 1,500 acres is the line of R. D. Belcher's 1,500 acres, running from the Willson Cary Nicholas line N. 60 E. to the mouth of the Spring branch on Flipping creek, as appears by the calls of that deed S. 60 W. from the Spring branch, back to the W. C. Nicholas line. Now, taking into consideration the worthless character of this land in 1842, is it likely that Chrispianos Belcher in the sale of the 800 acres to Robert D. would have stopped short of Simmons creek, a natural boundary which no one could dispute, and run a straight line through the brush and over hills and hollows, which would have cost more to run it than the land between that line and the creek was worth, as they then estimated it? And is it likely that Robert D. Belcher, in 1852, when he sold this land to Witten, would have stopped short of Simmons creek, by his deed, or that Witten would have accepted a deed which he understood to stop short of Simmons creek, and run by a straight line from the two birches to the six chestnuts instead of going to the creek? I think not; and I think so in part, from the conduct of all the parties concerned, after the transaction. Robert D. Belcher never set up any claim to the land west of Simmons creek, after the date of this deed to Witten, althongh he says he always claimed as part of his 800 acres all the land west of that creek before the date of said deed, and as we shall see hereafter Witten and all persons claiming under him down to the appellee in this case claimed all lands in controversy in this case up to the line of Simmons creek until this controversy arose, after October, 1884, when the deed of Chrispianos Belcher to George W. Belcher was executed. And during all these years no human being was found to dispute this claim, and still more than all this, Robert D. Belcher testifies that Chrispianos Belcher conveyed this 200 acres to him by the line of Simmons creek, and the line S. 55W. from that creek to the six chestnuts, and that it was his intention to convey to W. H. Witten, the same lands and by the same boundary lines as it had been conveyed to him by Chrispianos Belcher, whether he accomplished it or not.

Answer of the defendant, The Simmons Creek Coal Company.

This answer commences on page 47 of the record, and is a most remarkable answer in view of the manner in which it has conducted its defense. (1) It denies that Chrispianos Belcher executed and

delivered to Robert D. Belcher a deed for the 200 acres of land, more or less, in controversy in this suit; (2) It denies that Chrispianos entered into any sort of contract with R. D. Belcher in relation to the sale of said 200 acres of land in question; (3) It denies that the line of said 200 acres of land, commencing at the two birches on Simmons creek, runs up Simmons creek, or that it was intended to run up Simmons creek; (4) It denies that there was any mistake in the calls of said deed of R. D. Belcher to Witten, except in the degree and distance given, from the two birches to the six chestnuts; (5) It denies that Robert D. Belcher ever had any title to the land in controversy in this suit; (6) It denies that either Robert D. Belcher or William H. Witten, or any one claiming under them or either of them, ever had the actual possession of the said 200 acres, or any part of it, or that Witten ever had actual possession of the 1,100 acres or any part of it; (7) It denies that the line of the 200 acres, running from the two birches up Simmons creek, was or is defectively described in the deed of R. D. Belcher to Witten, or that said line runs, or was intended to run up Simmons creek, as claimed by the appellee; (8) It denies that William H. Witten ever claimed that the line of the 200 acres commenced at the two birches and run up Simmons creek, and up the left hand fork of Simmons creek and to the six chestnuts; (9) It denies that the deeds under which it claims the land in controversy constitute a cloud upon the title of the complainant (the appellee) to the land in question, or that the complainant has any title to the land in controversy; and (10) It denies each and every allegation of fraud charged in the bill. On page 52 of the record this answer reads as follows: "Respondent further says that it is true that it has possession of the tract of land claimed and owned by it under its title deeds; that it is preparing to mine and ship coal; that its lessees have already expended large sums of money in the opening of the mines, making drifts, building narrow-gauge railroad, erecting houses, buildings, tipples, etc.; that its said tract of land is a valuable one, worth at least ten thousand dollars, its chief value consisting in the coal and timber," etc. And the answer (same page) avers that "the complainant has no standing in this cause in a court of equity." The denials of this answer are cheap and did not cost the gentlemen composing the Simmons Creek Coal Company any wear and tear of conscience, as none of them could muster sufficient courage to answer the bill on oath. In fact, the answer is really the answer of the counsel of appellant in the case *for* the corporation, as appears by its conclusion on page 53 of the

record, as follows: "And by way of authentication of this answer, this respondent has caused its corporate name to be hereto attached and its corporate seal to be hereto affixed.

THE SIMMONS CREEK COAL COMPANY,
By Quarrier & Reynolds, Sol's."

The bill being filed, in part, to stay waste by injunction, pending this suit, was sworn to as it had to be (page 9 of the record). And while a corporation may answer under its corporate seal, the effect of such an answer not made upon personal knowledge, is very different from an answer under oath.

See The Union Bank of Georgetown *vs.* Anna Geary, 5 Peters U. S. Sup. Court R. 99,

Such an answer "may be controlled by one witness." The first and most material allegation of the bill thus denied is the allegation that Chrispianos Belcher conveyed the 200 acres of land in question to Robert D. Belcher, by the deed claimed to have been lost and not recorded. The only *positive* proof of the execution of this deed is by Robert D. Belcher himself. Two other persons living at the time he gave his deposition—Chrispianos Belcher, who made the deed, and William H. Witten, the grantee therein and to whom the deed was delivered by Robert D. to be recorded, and who knew the truth as to this disputed fact—were not examined. Witten as will appear hereafter, was mentally incompetent to testify; and Chispianos Belcher, the grantor in the deed, was not called as a witness by the appellant for reasons best known to the appellant and its counsel. As will appear hereafter by the deposition of S. W. Hammack, the notary who took his acknowledgement of the deed to George W. Belcher in question in this suit, Chrispianos Belcher was, and had been for about 20 years, a resident of Montgomery county, Missouri, at the date of the acknowledgement, October 18, 1884. The depositions of S. W. Hammack and William Miller were taken in Montgomery county, Missouri, where Chrispianos resided, on the 16th day of April, 1886 (record, p. 180). The notice by the appellant to take these depositions also included Chrispianos Belcher as a witness whose deposition would be taken, but Mr. Belcher failed to appear and give his evidence. And it will be seen by the depositions of Miller and Hammack, that A. W. Reynolds, Esq., one of the counsel, of record, of the appellant, the Simmons Creek Coal Company, was present and cross-examined these witnesses (record, p. 170).

Here was a most excellent opportunity afforded said Company and its counsel to take the deposition of Chrispianos Belcher and *prove* by him that he never conveyed the 200 acres of land in question in this suit to Robert D. Belcher, if such was the fact, but they neglected to avail themselves of it. I submit that this failure, of itself, fully corroborates all that Robert D. Belcher testified in the matter. And Robert D. Belcher is further corroborated by the dates of the deeds for 200 acres and 1,100 acres, both dated December 23, 1852, the 200 acres with general warranty, and the 1,100 acres with special warranty, and also by the acknowledgment of both deeds on the same day, May 7, 1853; the 200 acres by R. D. Belcher and his wife, and the 1,100 acres by Robert D. and Chrispianos Belcher and their wives, before the same justices. And the inquiry very naturally arises, why it was, if Chrispianos Belcher had not already conveyed the 200 acres to Robert D. Belcher, he failed to include in it the deed for 1,100 acres? Or why he did not join in the deed for the 200 acres, as well as in the deed for the 1,100 acres? And when the further facts proved by R. D. Belcher, that Chrispianos Belcher, William H. Witten and R. D. Belcher were all together at the time the deeds for the 200 acres and the 1,100 acres were executed, and that Witten wrote them both, are considered, the proof, I submit, is conclusive that Chrispianos *had* already conveyed the 200 acres to R. D. Belcher, and it can not reasonably be supposed that Witten would have accepted the deed from R. D. Belcher alone if no deed for this tract had been made to him by Chrispianos. And to this may be added that if Chrispianos Belcher stood by, as he did, and saw Robert D Belcher convey this 200 acres to Witten, he was forever after estopped from denying his right to make that conveyance. What has already been said is, in my view of the case, sufficient to *effectually* dispose of the *first*, *second*, *third*, *fourth* and *fifth* of the denials of said appellant. The force and effect of the deed of Chrispianos Belcher to Joseph I. Doran, the appellee, as evidence, and otherwise in the case, will be considered further along, in connection with the deed of Chrispianos to George W. Belcher.

Possession of the premises in question by the Appellee, and those under whom he claims.

This is the subject of the sixth denial of the Simmons Creek Coal Company, and to prove our possession I begin with the evidence of

Robert D. Belcher.

He purchased the land in controversy as a part of the 800 acres he bought of Chrispianos Belcher in 1844, when it was an unbroken wilderness, and it remained in this condition, as we shall see hereafter, until the Simmons Creek Coal Company made its unlawful entry upon it. He owned it for eight years, during which time, as explained in his evidence, Chrispianos Belcher conveyed the part of the land now in controversy to him by deed with general warranty, by a line commencing at the two birches on Simmons Creek, and running thence up said creek with Miller's line, to the forks of the creek, and thence up the left hand or west fork of said creek to the corner of the Witten and Graham Payne tract, and thence S. 55 W. to the six chestnuts. He *claimed* the land during all these years, and sold it to William H. Witten by this same line, and *attempted* to convey it, and supposed he had conveyed it, to Witten by that line. But Witten wrote the deed himself, and failed to describe the line by which the land was bought and sold, in an intelligible way, and as it had been agreed on by his contract of purchase from R. D. Belcher. And neither said R. D. Belcher nor himself ever discovered the mistake in the call of the deed for said line until the fraudulent pretense of title to the part of said tract of land in question in this suit was set up by George W. Belcher and his grantees and associates in fraud, after October, 1884.

Deposition of W. Scott Witten.

This deposition is found on pages 89 to 100 of the record. It was given March 30, 1886, and the witness was then thirty-eight years of age. These dates are material in considering certain parts of his deposition. The counsel of the appellants deemed it his duty to object to about every question asked the witness, and the deposition is in bad shape to quote from. And the best thing, as I regard it, to be done is, to state the *facts* which it proves, which are as follows:

1. That in 1852, at the date of R. D. Belcher's deed to him, William H. Witten was living on a tract of 400 acres of land, the title to which was in *his* father, William Witten, and on which he had resided, as he claimed, for fifty years. And the witness had resided there with him ever since he was born.

2. That on 23d day of September, 1852, William Witten conveyed this tract of land by a deed of that date to William H. Witten.

A copy of this deed is found in the record, pages 165, 166.

3. That the tract of 1,100 acres conveyed by R. D. Belcher and Chrispianos Belcher to William H. Witten, December 23d, 1852, joined on and was at one point bounded by the tract on which William H. Witten then lived as aforesaid; and that the 200 acres adjoined and was bounded in part by the 1,100 acres.

4. That William H. Witten took the actual possession of the 1,100 acres by placing tenants on it.

5. That William H. Witten, after his purchase of the 200 acres, paid the taxes on it, and used it as a range for his cattle. (Record, pp. 90, 100.)

6. That in February, 1877, the witness purchased the 200 acres at a judicial sale, which was confirmed, but he never took a deed for the land, and that he and his father thereafter claimed and exercised ownership over it together.

7. That after the date of R. D. Belcher's deed to Witten, neither Chrispianos Belcher nor any one else, to the knowledge of the witness, ever questioned the title of Witten to the 200 acres, as claimed by him up to the line of Simmons creek, until the 25th of December, 1884.

8. That in 1877, or '8, the witness purchased a tract of land of John Belcher, adjoining the 200 acres, and took the actual possession of it by placing a tenant on it, and that this tenant ranged cattle for him on both places.

9. That the witness paid the taxes for his father on the 200 acres of land for the last fifteen years it was owned by his father and himself.

10. The witness offered the 200 acres of land for sale, first to William A. Powell, and then to Henry Sadler, who owned the adjoining land, before he sold it to Doran.

11. That the 200 acres was all in the woods at the time his deposition was being taken, "except what improvements has been put on by the defendant, and not enclosed." (This fact was proved by defendant's counsel on cross-examination, p. 98 of the record.)

12. That the witness had always understood that Chrispianos Belcher had conveyed the 200 acres to Robert D. Belcher prior to the conveyance of it to his father by R. D. Belcher. (This fact was also brought out by defeneant's counsel on cross-examination, record, p. 97.)

William H. Witten was not examined as a witness by reason of his physical and mental condition. (See record page 93.)

A question was asked the witness as to a tract of land known as the Henry Walker tract, owned at some time by Chrispianos Belcher, which cornered on the two birches on Simmons creek. The answer of the Simmons Creek Coal Company in this case makes this call in the deed of R. D. Belcher to Witten a pretext for charging that at the date of Robert D. Belcher's deed to Witten for the 200 acres, Chrispianos Belcher "owned the land down to the two birches, and which is now the land of this respondent." And that this fact was recognized by the parties to that deed (record, p. 52). These two birches, as stated, were a corner called for in the deed of R. D. Belcher to Witten, dated December 23, 1852, and of a deed of Chrispianos Belcher to Henry Walker for 640 acres, dated April 12, 1856. For a copy of this deed see record, pages 167, 168. And see the location of this tract on the map at page 2 of the record, showing that it corners on the same two birches mentioned in R. D. Belcher's deed to Witten. And the evidence shows that the appellee, Doran, himself took actual possession of this 200 acres of land in question before the commencement of this suit and before the Simmons Creek Coal Company, or any one through whom it claims title, set up any claim or had a shadow of a claim to said 200 acres or any part thereof. Under the laws of Virginia, as they existed in 1852 and in 1863, when West Virginia was created, and as they now exist as a part of the laws of this State, the three coterminous tracts of land, to-wit: the 400 acres owned by William H. Witten, and of which he had the actual possession at the dates of his deeds for the 1,100 acres, and the 200 acres, and these three tracts formed but one entire tract. And the actual possession of his "home tract" by William H. Witten extended to the whole of the tracts of 1,100 acres and 200 acres to their exterior boundaries.

OVERTON'S HEIRS VS. DAVIDSON, 1 Grattan's Virginia R. 2d edition, top pages 217, 229.

I omitted in the proper place to state other important facts proved by the deposition of W. Scott Witten. He sold the land in controversy to Joseph I. Doran, he says, by the line from the two birches on Simmons creek, up said creek to its forks, and thence up the west fork (heretofore called the left hand fork) to a white oak and pine, southwest corner to a tract owned by his father and Graham Payne, and thence either S. 50 or 55 west to the six chestnuts. See record, pp. 91, 92. Answers to questions 14 and 15. And decree. map, in the record, for the location of the Witten and Payne tract.

Deposition of John W. Spotts.

This deposition is found on pages 103 to 105 of the record. He says he served a notice in the name of the appellee, Doran, and at his instance, on several persons not to trespass on the lands in question, and that at and before time he served the notice one Abel Massey was living in a house on said land in controversy, claiming under Doran (record, p. 104).

He modifies this statement on his cross-examination. He says he don't know that Massey *lived* in the house, but Joseph I. Doran leased it to Massey on the 14th of February, 1885, and *he* told him to take possession of it. The house he says, was under construction, but he could not say whether the defendant or some one else was constructing it. Appellant's counsel asked him this question: "Do you mean to swear that neither the defendants nor those under whom they claim were in possession of the land in controversy at that time?" He answered. "To my best knowledge and belief they were not," etc. Record pp. 104, 105.

This evidence, while it fails to prove the *actual* possession of the unfinished house, does prove a very important act of ownership over it, by the appellee, at a time when there was no adversary possession of it by any one, so far as the evidence in the case shows

The land in question was conveyed by William H. Witten, W. Scott Witten and others, with other lands, to Joseph I. Doran, on November 5th, 1881. Record pp. 12, 13. On January 1st, 1883, Doran conveyed this land, with several other tracts, to the Southwest Virginia Improvement Company. Record pp. 14 to 24. And on the 13th of December, 1883, the said company reconveyed this land, with other tracts, back to Doran. This tract is No. 1, conveyed by Doran to the Southwest Virginia Improvement Company (record pp. 14, 15), and is designated No. 1 in this deed. Record p. 26.

While it is nowhere distinctly stated that all of the lands mentioned in these last named deeds were purchased by Doran for the Southwest Virginia Improvement Company, it sufficiently appears from the whole scope of the evidence that such was the fact.

Deposition of James A. Crocket.

Record, pp. 106, 107. On page 107 of the record, in answer to question 6, on his cross-examination, he says: "I was the first man that sold out to the Southwest Virginia Improvement Company, and

was the first man they hired to aid in making surveys, and I selected my own surveyor. I was particularly interested in remembering everything in the interest of my employers." He was then asked by the attorney of the appelants this question:

"The complainant claims the land in controversy for the Southwest Virginia Improvement Company, don't he?" And he answered "As far as I know, the Southwest Virginia Improvement Company have claimed the land ever since it was surveyed." And by reference to page 106 of the record, it appears that he commenced his surveying operations as early as October, 1882.

At the time of the taking of the deposition of W. Scott Witten (March, 1886), the 200 acre tract, more or less, of which the land in controversy is part, was all in the woods, except what improvements had been put upon it by the Simmons Creek Coal Company, "and not enclosed." See his deposition, record, p. 98. This was in answer to question No. 14, on cross-examination.

Extent and value of these unenclosed improvements.

The witness, John W. Spotts, in his deposition (record, p. 104) says that the improvements made on the land in question by the Simmons Creek Coal Company could not exceed, as he thought, $200.00. They consisted, he says, "of one ordinary frame building, and there might have been some log cabins higher up the creek. Near the forks. I think there was a log cabin; to my best belief none but some slight openings on the outcrop, as though there had been prospecting for coal." This statement was not questioned by the appellants. And this is the only *evidence* in the case as to the extent and value of these improvements. This coal company, as we have seen, is very liberal in its admissions as to what it had done in the way of taking actual possession of the land in question, the improvements made thereon by it, the great expense incurred, and what it intended to do. It admits the making of drifts, building of a narrow guage railroad, erecting houses, building tipples, etc., not charged in the bill, nor proved in the case. And it has failed to prove a single hour of actual occupation of any one of the buildings it may have put up on the premises, or of a single foot of the land in question, by it or under its authority. Its *claim* of title, and the trespasses committed by it, is all it has to stand on.

And now, I submit with entire confidence, that the evidence of the entry upon, and possession of the land in controversy by the appellee, Joseph I. Doran, and those under whom he claims, and their continuous possession, claim of title and open and notorious

acts of ownership over it, unchallenged and undisputed for 32 years, is sufficient, and more than sufficient, to enable the appellee to maintain this suit, upon the well settled principles of law governing such cases. BOUVIER'S LAW DICTIONARY, Vol. I, p. 527, defines the word *enter* as follows:

"To go upon lands for the purpose of taking possession; to take possession. In a strict use of terms, entry and taking possession would seem to be distinct parts of the same act; but practically, entry is now merged in taking possession."

GREEN VS. LITER, 8th Cranch, U. S. Sup. Court R. 229, 245 to 249.

LOMAX'S DIGEST OF THE LAW OF REAL PROPERTY IN VIRGINIA, etc., vol. 1, p. 274, First Edition. He says:

"The effect of an entry or claim is, to put the person who enters or claims, into the actual possession, and seisin in deed of the lands. Thus Littleton says—'By such entry he shall have as good a possession and seisin of all the lands and tenements whereof he hath title of entry, as if he had entered in deed into every parcel."

The said answer of the Simmons Creek Coal Company also denies (its 8th denial) that William H. Witten ever claimed possession of the land in controversy. The fact denied has been so fully proved already that further notice of it here would not be profitable. Said company's 9th denial is, that the deeds under which it claims title to the land in controversy are clouds upon the appellee's title to said land, and further denies that the appellee *has* any *title* to the land in controversy. This brings up the whole controversy again. If the appellee has no title to the land in controversy, it follows, as a matter of course, that the deeds under which said company claims the land are *not* clouds upon an *alleged* title which has no existence in fact. But if the appellee *has* title to this land, then, it also follows, as a matter of course, that said deeds were a cloud upon his title until they were removed by the decree of the court below, from which this appeal is taken. This question will be further discussed in connection with the deeds of Chrispianos Belcher to George W. Belcher and Joseph I. Doran.

Denial by Simmons Creek Coal Company of all charges of fraud, etc.

This is its 10th denial.

But the richest part of this answer is that part of it in which the charge is made that either Chrispianos Belcher or the complainant had attempted to commit a fraud upon this virtuous corporation. In

fact, it is so rich that I will insert it here for fear it will be overlooked. And here it is, pages 50, 51 of the record:

"Further answering, respondent says that it supposes it is true that the said Chrispianos Belcher, on the 2nd day of April, 1885, did make a deed to the complainant, pretending to convey to him the said two hundred acres, the courses of which deed embrace or purport to embrace a part of the land owned by this respondent under the deed of Chrispianos Belcher to George W. Belcher of the — day of October, 1884, and hereinbefore referred to. What representations the complainant or his agents made to the said Chrispianos Belcher or what consideration he paid him to induce him to make said deed respondent does not know, but is satisfied that either the said complainant or the said Chrispianos Belcher—which one it does not know—have attempted to perpetrate a deliberate fraud upon the rights of this respondent; and the attention of the court is respectfully and especially asked to the deed of Chrispianos Belcher to the complainant to show the inconsistencies and contradictionn, want of good faith and fair dealing, shown on the face thereof.

"This respondent had purchased the tract of land claimed by it for a fair and valuable consideration and without notice of said pretended equity, and had obtained the legal title thereto and had had its title deeds duly recorded long before the said complainant obtained his deed of April 2nd, 1885, from Chrispianos Belcher, and with notice of respondent's title of record, and that the boundary line between respondent's land and that claimed by the complainant was, from the two birches, a straight line to the six chestunts, yet the complainant, in the face of all this knowledge and notice furnished him by the record, went to work deliberately to hatch up his pretended secret equity to this land, and to assert it in a court of conscience against this respondent, a complete purchaser for a valuable consideration without notice of any equity claimed by the complainant."

And now let us see how this corporation and those under whom it claims, including the defendant, George W. Belcher, show up in the mattea of honesty and fair dealing in this case. Witten's deed for the land in question was admitted to record in Mercer county where the land lay, in June 1853, Record, p. 10, and from that time forth this record was constructive notice to all the world of the contents of that deed. But it is plain from the evidence in this cause that this corporation and its agents, as well as the said George W. Belcher, had actual notice of its contents. The deed from Chrispanos Belcher to George W. Belcher, as we shall see hereafter,

was prepared in Mercer county in pursuance of written correspondence, and sent to him to be executed in Missouri, where he resided, and it calls to run from the "two birches on the west bank of Simmons Creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher on a ridge." The A. G. Belcher tract, as we have seen, is the same tract called Miller's survey in the deed from R. D. Belcher to Witten. George W. Belcher must have had actual notice of this deed in order to call for Witten's line as he did. The evidence in the case also shows that George W. Belcher lived in the vicinity of the land in question nearly all his life, and was well acquainted with it and its surroundings. And now let us find out, if we can, where *he* understood Witten's line to be at the date of his deed, and where Chrispianos understood, and, in fact, knew it to be as he had conveyed the land to R. G. Belcher. W. Scott, Witten testifies (record, p. 96) as follows: "I had one conversation with George W. Belcher in regard to this matter on the 25th day of December, 1884, at Rudisille's Hotel, in the town of Pocahontas, Va. I asked him what land it was he had sold (as Mr. Burkholder told me there was trouble about the matter). He told me it was the land I sold Joseph I. Doran. I told Mr. Belcher he ought to be careful about trading on that land, and he remarked to me that when I sold it I did not get much for it, and that if I would not kick in the thing that they would make me whole. This was all the conversation as I remember." This was in answer to a question asked him by complainants counsel. George W. Belcher was present when this answer was given. Record, p. 100.

Deposition of James A. Crocket.

Record, pages 106 to 109. This deposition was taken, as the record shows, in the presence of George W. Belcher. In answer to a question as to conversations with George W. Belcher he says:

"We had a conversation about the lands in controversy. When we got down to the corner on the creek I asked Mr. Belcher whose land that was adjoining the Barcroft land. He said it it was Witten's." Complainant's counsel then asked him this question, "Have you had any conversation with George W. Belcher since he set up claim to the land here in controversy—how he happened to lay claim to it?"

He answered, "Yes sir: I have had some conversation with Mr. Belcher about it. Mr. Belcher told me that he never knew he had any land there until Mr. Welch and Mr. Reynolds found it out, as

I remember he said, by running the lines and plotting." Record, p. 106. Mr. Reynolds and Mr. Welch are two of the gentlemen through whom the Simmons Creek Coal Company claim the land and in controversy. And there is no doubt that G. W. Belcher never knew or suspected that he owned any of this land until it was, as he expressed it, "found out" by running lines and *plotting* by these gentlemen. *Plotting* was the right word in the *right* place. And if George W. Belcher, who had lived there all his life, did not know he owned any of the land in controversy until these gentlemen by their *plotting* and running of lines *found it out*, then it is an undeniable fact, that he never *bought* from Chrispianos *any* of the land in controversy. And that when he made his purchase and took his deed from Chrispianos *he* understood Witten's line to run from the two birches to the six chestnuts precisely as it is called for and described in the deed from Chrispianos Belcher to Joseph I. Doran. And now let us see where Chrispianos, his grantor, understood Witten's line to be, and what land he understood he was selling and what *he* intended to convey.

Deposition of S. W. Hammack.

Record, pages 174 to 179. This witness was the notary before whom the deed from Chrispianos to George W. Belcher was acknowledged. In answer to a question as to conversations with Chrispianos Belcher he says: "A short time prior to the execution of this deed by Mr. Chrispianos Belcher he informed me that he expected he would have to make a deed to his brother George to a small piece of land in West Virginia, where he came from. He said at the time he had written to his brother that if he would send him some money he would make him a deed to the land. Shortly after that he came to me with a deed prepared ready for acknowledgment. He told me it was a small piece of land lying in the forks of a creek or two creeks, a three cornered piece, containing as he thought, about thirty or forty acres; said he did not know what George wanted with it, as he did not think it was worth anything, but he had understood there was a railroad coming very near to it, and there was coal in that country, and that he thought that was the reason his brother George wanted it." It would seem that he did not learn these facts from George, but from some one else, but there can be no doubt that the quantity and the lay of the land, and that it was not worth much, was communicated by George, who knew exactly how the land lay. And George had told him the truth. It

was, as all the maps show, "a small three-cornered piece" of land lying in the forks of a creek," and "contained about thirty or forty acres." Record, pages 174, 175. The actual quantity of land conveyed by the deed is thirty-six acres. Record, page 111. And so, both the grantor and grantee in this deed from Chrispianos to G. W. Belcher understood it in precisely the same way, and that it did *not* include any of the land in controversy in this suit. And now we are confronted with this state of things. Robert D. Belcher had *sold* this land to William H. Witten by the line up Simmons creek, and thence to the six chestnuts by the same line described in Chrispianos Belcher's deed to Doran, and he *attempted* to convey the land by the same line, but *by mistake* failed to do so; but all the parties concerned, Chrispianos, Robert D., W. H Witten and George W. Belcher, supposed and understood for more than thirty years that Robert D. Belcher had so conveyed the land to Witten, while in fact he had not done so. Can it be possible that this *mistake* in the call of R. D. Belcher's deed to Witten compels the line of that deed up Simmons creek, and to the six chestnuts, to be so run as to give to George W. Belcher or those claiming under him, land that he never bought nor paid for. I confidently submit that it can not.

This evidence of the witness Hammack, was objected to by the counsel for the appellant, not as incompetent, but as immaterial and irrelevant. It is submitted, however, that it *was* material, relevant, competent and proper evidence in the case. Chrispianos Belcher was a party defendant in the suit, and although he had never demurred, plead or answered to the bill, he, with all the other defendants in the case, appeared in the court and consented to the submission of the case on printed briefs. Record, p. 88.

As a defendant in the case, we submit, his conversations were competent and proper evidence, and so far as his statements were made at the time of the acknowledgment of the deed by him, as to the location, shape and quantity of the land he was conveying by the deed he was executing and acknowledging, they were parts of the *res gestae*. In connection with the order above named, the attention of the court is called to the agreement of the counsel of both parties in relation to the lost deed, etc., from Chrispianos to Robert D. Belcher.

In this connection the attention of the court is called to the following points of defense set up in its answer, by the Simmons Creek Coal Company. Record, pages 52, 53.

Respondent, further answering, says that the alleged mistake set up in the bill in the deed from Chrispianos Belcher to Robert D.

Belcher never existed and was never made, and this is apparent from the following facts:

1st. The quantity called for in the deed from Chrispianos to said Robert D. Belcher is 200 acres. If the line from the two birches to the six chestnuts be run as a straight line, Robert gets the 200 acres in full that he purchased; but if the line be altered, as claimed in the bill, so as to run up Simmons creek, with the meanders of the creek, to the head of the left-hand fork thereof, and thence to the chestnuts, it will enclose 75 acres more than Robert bought from Chrispianos.

2nd. If the line be run as a straight line between the points aforesaid, George W. Belcher gets the 75 acres that he purchased from Chrispianos; but if it be run as claimed in the bill, then George will have acquired only by his deed the lands lying above and between the forks of Simmons creek—15 acres.

3rd. The true method of running the line between the birches and the chestnuts has *ante litam motam*, and more than 30 years ago been acquiesced in by the remote grantors of the complainant, under whom he now claims title, to-wit: Robert D. Belcher and Wm. H. Witten. See Complainant's Exhibit A No. 1, where the straight line between the birches and chestnuts is called for.

4th. The true method of running said line (a straight line) is acquiesced in by the remote but common grantor of both complainant and respondent in the deed from Chrispianos Belcher to George W. Belcher, dated 18th Octoder, 1884 (Exhibit B No. 2 filed with the bill), thus showing an acquiescence in the straight line from 23rd December, 1852, to 18th October, 1884, a period of more than thirty years.

5th. All the deeds that give any description of lands claimed by both complainant and respondent claim to run from the birches to the chestnuts by one line. Complainant, to get from one of these points to the other, is compelled to interpolate a second line from the head of Simmons creek to the chestnuts.

The first and second points are, simply, not true, and if they were true, they are no defense in this case. The quantity of land conveyed by Chrispianos to Robert D. Belcher and by Robert D. to Witten, was *estimated* to contain 200 acres, more or less, and, therefore, the number of acres was immaterial. And neither Chrispianos nor Robert D. Belcher ever questioned it.

Deposition of William Ingles.

Pages 111 to 115 of the record. This witness is a civil engineer, and made surveys of the lands in question for the appellee and the S. W. Va. Imp. Co. The land in controversy as claimed by the Simmons Creek Coal Company, instead of being 75 acres, as called for in the deed of G. W. Belcher, is 176 acres. And if said company is confined to the three-cornered piece of land in the forks of the creek, it gets about 36 acres instead of 15 acres. And Chrispianos Belcher is shown to have been right in his estimation of the quantity of land contained in his deed to George W. Belcher, and the land in controversy in this suit is, this witness says, about 140 acres, instead of 75 acres. So that if the Simmons Creek Coal Company were to succeed in this appeal, it would get more than twice as much land as it bought, including the part in controversy.

Record, page 111.

The third point is a legal curiosity. Exhibit A No. 1, mentioned in it, is R. D. Belcher's deed to Witten, in which it is averred "the straight line between the birches and the chestnuts is called for."

The fourth point is but another form of the third point, and both of them, with all due respect for the counsel who drew the answer, seems to me to be simply playing with the court. The idea of an acquiescence by any one in the running of a straight line, or in the claim of a straight line from the birches to the six chestnuts, a thing never even dreamed of until it was hatched in the fertile brain of the *plotters* of this Simmons Creek Coal Company, is so utterly preposterous as not to deserve a moment's consideration. Before leaving the answer of this corporation, there is one more portion of it to which I desire to call special attention. It is found on page 50 of the record.

"Further answering, respondent says that the two birches and the six chestnuts are well known and recognized corners, and have been so known and recognized for long years, both by Robert D. Belcher and Chrispianos Belcher, and that the said Robert D. Belcher and Wm. H. Witten long lived (and the said Wm. H. Witten now lives) in the immediate vicinity of this land, and respondent avers that they were altogether familiar with the corners to said land and all the water-courses thereon, and said Witten claims to have held under said deed from Robert D. Belcher for a period of more than thirty years; and now, after this long lapse of time and this long acquiescence and silence of Witten on the subject of a mistake of boundary, this respondent, for the first time, hears it from the com-

plainant's bill, and this, too, after most of the old men living in the neighborhood are dead and gone, and the recollections of the transactions, if any there were, between the said Chrispianos and Robert D. Belcher, faded from the memory of those living."

I quote this lachrymose effusion of this corporation, or rather of its counsel for it, in order to show, with the other portions of the answer quoted, that its whole defense in this case is made up of shams and false pretences. It seems not to have occurred to these able counsel that if what they say is true, "that the two birches and the six chestnuts" were "well known and recognized corners," by R. D. Belcher and Witten for the long period of time named, and that they "were altogether familiar with the corners to said land and all of the water-courses thereon," these allegations are but another nail in the coffin of this *honest* and greatly *surprised* corporation. Would these gentlemen, with such perfect knowledge of *how* to run up Simmons creek "with Miller's line," and from the creek to the six chestnuts, have knowingly undertaken to get there by the course S. 55 W., and the distance of 120 poles, which took them away from Simmons creek, and away from Miller's line, and away from the six chestnuts? I answer *not*. And the deed executed by Chrispianos and R. D. Belcher to Witten for the 1,100 acres, executed at the same time and place of the deed of R. D. Belcher to Witten for the 200 acres, both written by Witten himself, and in the presence of Chrispianos Belcher, shows that they were not ignorant as to the line S. 55 W. from Simmons creek to the six chestnuts. See copy of that deed on pages 10, 11 of the record. The north line of that tract, as called for in that deed, is N. 55 E. 294 poles to six chestnuts, and there it stops, and does not go to Simmons creek. Robert D. Belcher, in his evidence, says the line from Simmons creek to the six chestnuts was not surveyed, but "supposed." Record p. 136. And this was doubtless true. But they evidently supposed that the line N. 55 E. continued on from the six chestnuts would strike Simmons creek at or about the corner of the Paine and Witten tract, and the Miller survey, (see map at page 2 of the record). And hence in the deed from R. D. Belcher to Witten, they reversed the course of that line and called it S. 55 W., and gave the supposed distance back to the six chestnuts 120 poles, and they were not very far wrong.

But this *long silence* and *long acquiescence* of William H. Witten! Acquiescence in what? In his own claim, under a deed written by himself, never questioned nor disputed, to all the land up to Simmons creek and the line of Miller's land on the east side of that

creek from the two birches to the corner of the Payne and Witten tract and of Miller's survey, and thence S. 55 West to the six chestnuts. But he *was* silent all these years. And why, pray, should he not have been silent, as well as acquiescent? What was there with reference to the boundaries of his land to cause him to speak? Nothing. But the Simmons Creek Coal Company, a newly fledged corporation, hears of the alleged mistake in the call of the deed of R. D. Belcher to Witten for the first time from the plaintiff's bill. Wonderful, indeed. It could not have heard of it before it was born, and it had hardly shed its swadling clothes before the plaintiff's bill was filed. The certificate of the incorporat on of this company is found on pages 446, 447 of the Acts of the Legislature of West Virginia, of 1885, published by the authority of that State, and is as follows:

SIMMONS CREEK COAL COMPANY.

I, Randolph Stalnaker, Jr., Secretary of State of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of "Simmons Creek Coal Company," for the purpose of mining, shipping and selling coal, iron, ores and other minerals; of owning, working, leasing and letting to lease upon rents or royalties coal and other mineral lands; of manufacturing, using, shipping and selling coke; of manufacturing iron and steel, and any and all articles that can be made from iron or steel, and shipping and selling the same; of buying, cutting, manufacturing and selling lumber; of carrying on in connection with any or all of said purposes the business of buying and selling goods, wares and merchandise of any and all descriptions; which corporation shall keep its principal office or place of business at Princeton, in the county of Mercer, and State of West Virginia, and is to expire on the twelfth day of January, nineteen hundred and thirty-five.

And for the purpose of forming said corporation, we have subscribed the sum of two hundred and fifty dollars to the capital stock thereof, and have paid in on said subscriptions the sum of twenty-five dollars, and desire the privilege of increasing the said capital by the sale of additional shares, from time to time, to fifty thousand dollars in all. The capital so subscribed is divided into shares of

fifty dollars each, which are held by the undersigned, respectively, as follows, that is to say: by

P. H. Rorer, of Roanoke, Va., one share.

I. A. Welch, of Giles county, Va., one share.

N. L. Reynolds, of Mercer county, W. Va., one share.

A. W. Reynolds, of Mercer county, W. Va., one share.

G. W. Belcher, of Mercer county, W. Va., one share.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twelfth day of January, eighteen hundred and eighty-five.

P. H. RORER,
I. A. WELCH,
N. L. REYNOLDS,
A. W. REYNOLDS,
GEORGE W. BELCHER.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the twelfth day of January, nineteen hundred and thirty-five, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the said state, [G S.] at the city of Wheeling, this sixteenth day of January, eighteen hundred and eighty-five.

RANDOLPH STALNAKER, JR.,
Secretary of State.

This company became a corporation on the 16th day of January, 1885, and this suit was brought on the 1st day of August, 1885. Record, page 46. But this corporation, or its counsel for it, did not tell the truth when it said that it heard of the claim of a mistake in this boundary line of R. D. Belcher's deed to Witten, the first time "from the complainant's bill" It heard of the claim of the appellee to the land in controversy in this suit in February, 1885, but little over a month from the date of its incorporation. Record, pp. 103, 104. And the absurdity of this flimsy, and, I may say, *false* pretense, set up by this corporation, is demonstrated by the fact that the corporators are P. H. Rorer, I. A. Welch, N. L. Reynolds, A. W. Reynolds, and George W. Belcher, the very men, themselves, who started the trouble over the title to the land in question in this suit. And I. A. Welch was the president of the corporation when this suit was brought, as appears by the return of the Mar-

shal of the service of the subpœna on him as such president. Record, p 47. But the worst of the misfortunes that have befallen this most unfortunate corporation is that "most of the old men living in the neighborhood were dead and *gone*," when this young corporation was first startled by this claim of a mistake in the line of Witten's deed. But they were not *all* dead and *gone*. R. D. Belcher, to whom Chrispianos Belcher conveyed the land, and who conveyed it to Witten, was not dead, and we took his deposition and proved the execution of the deed to him, and the mistake of the calls of his deed to Witten. And Chrispianos Belcher was not dead and gone, except *gone* to Missouri, and this corporation did not avail itself of this living witness, to contradict R. D. Belcher.

It will be observed that these corporators of the Simmons Creek Coal Company commenced their operations to deprive the appellee of the land in question before they became a corporation, by taking from George W. Belcher one deed for a portion of the land soon after the date of his deed from Chrispianos Belcher, after having *persuaded* him that his deed from Chrispianos covered the land in question. On December 4, 1884, he conveyed to Newton L. Reynolds the undivided five-eighths of 75 acres, as he had been led by Reynolds and Welch to claim it, conveyed to him, as alleged, by Chrispianos Belcher. The boundary line of the tract as called for in this deed from the two birches to the six chestnuts is as follows: "Beginning at two birches on the bank of Simmons creek, in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obediah Belcher and a corner to the William H. Witten land, and with a line of said Witten land N. 50 degrees 40 minutes W. 85, 40 chains up Simmons creek, topping a ridge at 23 chains and crossing hollows and points of said ridge to six dead chestnuts on said ridge, a corner to A. G. Belcher's land." This call verifies the fact N. L. Reynolds the grantee and Welch had been "running lines and *plotting*," as George W. Belcher said they had. And the unnecessary particularity of these calls, instead of one simple straightforward call of N. 50 degrees 40 minutes W. 85, 40 chains to the six chestnuts, is, I submit, indicative of the fact that the parties engaged in the operation were conscious of crookedness in what they were doing. This was the only conveyance made by G. W. Belcher before the *plotters* were incorporated into the Simmons Creek Coal Company. His next deed is dated February 25, 1885, to P. H. Rorer, whose name heads the corporators, for three-eighths, undivided, of a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, * * * * and containing by re-

cent survey, by horizontal measurement, one hundred and seventy and 5-10 acres, and bounded as follows: Beginning at two birches on the bank of Simmons creek, N. 50 degrees 26 minutes W. 80, 33 chains up Simmons creek, crossing ridges and spurs to six dead chestnuts on a ridge, corner to A. G. Belcher. In this deed William H. Witten, his corner and line, are ignored entirely, and it changes the course and distance from the two birches to the six chestnuts, as called for in the deed to N. L. Reynolds. This disposes of the whole tract as far as G. W. Belcher is concerned. Record, pp. 56, 57, 58, 59, 60. For the residue of the deeds under which this corporation claims title to the land in question, see record, pp. 60 to 68, inclusive.

These deeds to Reynolds and Rorer show on their face that Reynolds and Welch *had* been "running the lines and *plotting*," (Italics mine) on, around and about Simmons creek and the six chestnuts, first by surface measurement and then by horizontal measurement, in a very short time after George W. Belcher obtained his deed from Chrispianos, and their surveying may have commenced even before the execution of that deed, as the counsel of the Simmons Creek Coal Company, in his cross-examination of the witness Crocket, succeeded in proving that George W. Belcher told him (the witness) "that Capt. Welch got him to write what he would take for his claim in there—*i. e.* to Chrispianos Belcher, his brother." The deeds referred to also show the result of very *careful* surveying, whereby they ascertained the quantity of land within their survey by surface measurement, running a straight line from the two birches to the six chestnuts to be 185 acres, and by horizontal measurement to be 170 5-10 acres. And they also show a very thorough examination of the records in the Clerk's office of the Mercer County Court, as far back as the deed from James Hector to Obediah Belcher for 2,500 acres. This 2,500 acres is evidently that portion of the 4,000 acres bought by Obadiah and Robert D. Belcher of Hector, spoken of by R. D. Belcher in his deposition (record, p. 137), which was conveyed by Hector to Obadiah Belcher in the partition of said 4,000 acres. This deed is not in the record, but the deed of Hector to Robert D. Belcher for the 1,500 partitioned to him is found on page 169 of the record. The north line of this 1,500 acres is laid down on the map marked p. 270, filed with the deposition of Wm. Miller, from the Willson Cary Nicholas line N. 60 E. to the mouth of the Spruce Pine branch on Flipping creek, and Obadiah Belcher's 2,500 acres lay immediately north of that line, and, as we have seen, extended across from the

Willson Cary Nicholas line to Flipping creek. And hence the call in George Belcher's deed to Reynolds for the "two birches on the bank of Simmons creek in a line of a survey of twenty-five hundred acres conveyed by James Hector to Obadiah Belcher." This line, N. 60 E. from the Nicholas line to Flipping creek, was the south line of that 2,500 acres, but the two birches were *not* corner trees in that line, but were corners to the Witten tract of 200 acres and the Henry Walker tract of 640. And to get the two birches as a "corner to Witten's land" they *had* to go to R. D. Belcher's deed to Witten for them, and when they found them, they found also that Witten's line ran from these two birches up Simmons creek "with Miller's line," and ended at the six chestnuts. And they could not be ignorant of the fact that there was a mistake in the call of this line, and that something was left out of it which was intended to be in it. They knew perfectly well from their own surveying that a line running S. 55 W. would never reach the six chestnuts, but actually ran away from them. And they knew that the distance called for, 120 poles, even by a straight line, would extend but little over one-third of the distance from the birches to the chestnuts, the distance being 328 poles. See report of surveyor Sinnett, record, p. 84. In fact there was not a single act of the men who comprise the corporators of the Simmons Creek Coal Company in connection with the claim of that company to the lands in controversy in this suit that is not indicative of a fraudulent intent on their part. The act of Reynolds and Welch in inducing George W. Belcher to set up a claim to the land in controversy was a fraud. His deeds for this land to Reynolds and Rorer were frauds both as to the vendor and his vendees. And the incorporation of George W. Belcher, N. L. Reynolds, Welch, and the others into the Simmons Creek Coal Company was doubtless done for fraudulent purposes, the better to enable them, as they supposed, to despoil the appellee of the lands in controversy. And the answer of the Simmons Creek Coal Company, under its corporate seal, instead of being sworn to by I. A. Welch, its President, is here insisted upon as evidence of this alleged fact. Mr. Welch could not have made the sweeping denials and false allegation contained in this answer on oath. If he had, Mr. Welch could have been indicted for perjury, but the corporate seal of the corporation could not be so indicted; and hence they concluded to fight under the corporate seal. It was not known when this suit was brought who the corporators of said company were, and George W. Belcher, N. L. Reynolds and P. H. Rorer were made defendants with the Simmons Creek Coal Company to

the bill. But the Simmons Creek Coal Company and Robert D. Belcher, who was also made defendant, were alone called upon to answer. But G. W. Belcher, Reynolds and Rorer, nevertheless, voluntarily filed answers, which all go for nothing, as they were corporators and stockholders of the company. The answer of Reynolds is found on page 69 of the record; that of Rorer on pages 80, 81, of the record, and that of George W. Belcher on pages 72 to 76 of the record. The answers of Reynolds and Rorer, if they had been properly filed, require no notice; but the answer of George W. Belcher is a remarkable document. It repeats, parrot like, from beginning to end, the denials, allegations, charges and lamentations of the answer of the Simmons Creek Coal Company. And here I leave it But George W. stood by and heard the witness, James A. Crockett, testify as to the conversation which took place between them, in which he, George W. Belcher, said "he never knew he had any land there until Mr. Welch and Mr. Reynolds found it out," as the witness remembered it, "by running lines and plotting." But he had not the courage to go upon the stand as a witness for the corporation and contradict him. He stood by and heard the witness, W. Scott Witten, testify as to his conversation with him in reference to the land in controversy, in which he offered to pay Witten for his silence. Witten testified in the presence of G. W. Belcher, as follows: "I asked him (G. W. Belcher) what land it was he had sold (as Mr. Burkholder told me there was trouble about the matter). He told me it was the land I sold to Joseph I. Doran. I told Mr. Belcher he ought to be careful about trading on that land, and he remarked to me that when I sold it that I did not get much for it, and that if I would not kick in the thing they would make me whole." If he thought even at that time that he had acquired title to the land in question, why did he offer to pay Witten to keep silent? And if Witten did not tell the truth, why did he not go on the stand and contradict him?

And the fact is, in my view of the defense set up by the Simmons Creek Coal Company in this case, it is nothing but

A sham and a fraud from beginning to end.

And this appears, as it seems to me, as well from what they *did* do, as hereinbefore stated, as what they *failed* to do. The whole defense of this company was made up of denials of facts which its corporators and officers knew to be true, but which its President, Welch, did not dare to deny on oath: upon affirmative

allegations, and charges of fraud against the appellee and those under whom he claims, which it did not even *attempt* to prove; upon the false pretense of being an innocent purchaser of the land in controversy for value, without notice of what it had the assurance to call "the secret equity" of the appellee And finally, upon its *forlorn hope*, by which it pretends that the line of the deed from R. D. Belcher to Witten *must*, by operation of law as well as by the intent of the parties, be run by a straight line from the two birches to the six chestnuts. They knew that such was not the intent of the parties, but they doubtless argued among themselves that it was better to show a bold front than to try to defend themselves upon the legal effect of the deed alone. But the most remarkable thing in the whole conduct of its defense is what the company did *not* do. That in the face of all the evidence produced by us, it never took the deposition of a single witness. And its pitiful pretense that all the witnesses who knew anything about the matters in question were dead and gone, can not avail it. Robert D. Belcher, who made the deed to Witten, was neither dead nor gone. Chrispianos Belcher, who conveyed the land in question to Robert D. Belcher, was not dead, although *gone* from this country, but near enough for George W. Belcher to obtain the deed from him under which he set up his fraudulent claim to the land in controversy. And, as already seen, this company had a convenient opportunity of taking his testimony in the case, which was not improved. And neither George W. Belcher, Newton L. Reynolds nor I. A. Welch, President of the company, were dead or gone, but all around and about where their depositions could be taken. We tried our best to *drive* this corporation into taking the depositions of R. D., George W. and Chrispianos Belcher, but did not succeed, and finally we ventured to take the deposition of R. D. Belcher ourselves. And there can be but one explanation to the failure of the officers, attorneys and managers of the corporation to put any of these witnesses on the stand. They did not dare to risk a cross-examination. They *knew* that a cross-examination would be fatal to their case. They *knew* that it would prove and settle the fact that Chrispianos Belcher *had* conveyed the land in controversy to George W. Belcher by the lines as claimed by the appellee from the birches to the chestnuts; that Chrispianos had *not* sold nor conveyed, nor intended to sell or convey to George W. Belcher, any other land than the three-cornered piece in the forks of the creek; that Welch and Reynolds *had* induced George W. Belcher to set up a claim to the land in question, which he did not buy and had no title to under his deed from Chris-

pianos; and had then induced him to convey the same to Reynolds and Rorer.

And here I will rest the appellee's case so far as this point is concerned.

The redemption of the land from forfeiture by George W. Belcher.

The farce played by George W. Belcher in the Mercer Circuit Court, in the pretended redemption of the land in controversy from forfeiture, was a harmless proceeding, and neither helped nor hurt anybody. A copy of these proceedings, including the deed of the Commissioner of School Lands to G. W. Belcher, is found in the record on pages 37 to 45. *First*, the land in question in this suit was *not* forfeited to the State for any cause; and *second*, if it had been so forfeited, George W. Belcher had no right to redeem it, and his pretended redemption was absolutely null and void. The only law of West Virginia for the redemption of forfeited lands in force in 1884, when these proceedings were had, was chapter 105 of the Code of West Virginia, Warth's edition. By the constitution and laws of that State, all forfeited lands were required to be sold by proceedings in the Circuit Court of the several counties in which they were situate, unless redeemed by the *former* owners or the creditors of such owners having liens thereon. Section 4 of that chapter provided for the appointment and qualification of a Commissioner of School Lands by the Circuit Court of each county in the State. Section 5 of said chapter, among other things, provided as follows:

"5. It shall be the duty of Commissioner of School Lands once in each year to ascertain from the reports made as aforesaid, and such other information as he may be able, by the use of due diligence to obtain, all the lands which have become or been ascertained to be liable to sale under the provisions of this chapter, as to which no proceedings have been commenced for the sale thereof, to file his petition in which he shall include all the tracts, lots and parts and parcels of any tract or lot of land so liable to sale, in the Circuit Court of his county, praying that the same may be sold for the benefit of the school fund." The balance of this section and sections 6 to 12, regulate the proceedings and sale of the land, etc., and the conveyance of the land sold to the purchaser.

Section 13 provides that "the former owner of any such land shall be entitled to recover the excess of the sum for which the land may be sold," over what is due the State, "if his claim be filed in

the Circuit Court that decrees the sale, within two years thereafter, as provided in the next succeeding section."

And section 14 provides as follows:

"14. Any owner may, within the time aforesaid, file his petition in said Circuit Court, stating his title to such lands, accompanied with the evidences thereof, and upon full and satisfactory proof that at the time the title to said lands vested in the State he had a good and valid title thereto, legal or equitable, superior to any other claimant thereof, such court shall order the excess mentioned in the next preceding section to be paid to him; and upon a properly certified copy of such order being presented to the auditor, he shall draw his warrant on the treasury in favor of such owner, or his personal representative, for such excess. At any time during the pendency of the proceedings for the sale of any such land as hereinbefore mentioned, such former owner, or any creditor of such former owner of such land having a lien thereon, may file his petition in said Circuit Court as hereinbefore provided, and asking to be allowed to redeem such part or parts of any tract of land so forfeited, or the whole thereof, as he may desire, and upon such proof being made as would entitle the petitioner to the excess of purchase money hereinbefore mentioned, such court may allow him to redeem the whole of such tract if he desire to redeem the whole, or such part or parts thereof, as he may desire, less than the whole, upon the payment into court, or to the Commissioner of School Lands, all costs, taxes and interest due thereon, as provided in this chapter, if he desire to redeem the whole of such tract; or if he desire to redeem less than the whole of such tract, upon the payment, as aforesaid, of so much of the costs, taxes and interest due on such tract as will be a due proportion thereof for the quantity so redeemed. But if the petition be for the redemption of a less quantity than the whole of such tract, it shall be accompanied with a plat and certificate of survey of the part or parts thereof sought to be redeemed. Whenever it shall satisfactorially appear that the petitioner is entitled to redeem such tract, or any part or parts thereof, the court shall make an order showing the sum paid in order to redeem the whole tract, or the part or parts thereof which the petitioner desires to redeem, and declaring the tract, or part or parts thereof, redeemed from such forfeiture, so far as the title thereto was in the State immediately before the date of such order; which order, when so made, shall operate as a release of such forfeiture so far as the State is concerned, and of all former taxes on said tract, or part or parts thereof so redeemed, and no sale thereof

shall be made. If the redemption be of a part or parts of a tract, the plat or plats and certificate of the survey thereof hereinbefore mentioned, together with a copy of the order allowing the redemption, shall be recorded in a deed book in the office of the Clerk of the County Court. *Provided*, That such payment and redemption shall in no way affect or impair the title to any portion of such land transferred to and vested in any person, as provided in section three of article thirteen of the constitution of this State."

By reference to page 37 of the record it will be seen that at the time George W. Belcher filed his petition to redeem the land mentioned in it from the alleged forfeiture, there were no proceedings pending in the Mercer Circuit Court for the sale of the land for the benefit of the school fund. And the proceeding on his petition is entitled as follows:

GEORGE W. BELCHER, *Plaintiff*,
against
R. B. McNUTT, *Commissioner of School Lands.* } In the matter of School Lands.

The whole of the proceedings of the Mercer Circuit Court upon this petition were without jurisdiction and void. And the petition itself states the facts which show this to be true, aside from the fact that it was not filed in a pending proceeding for the sale of the land. The petition alleges that the land mentioned in it was forfeited to the State of West Virginia for the failure of Chrispianos Belcher to have it entered on the land books of Mercer county, and says: "Your petitioner further avers that at the time the title vested in the State, his said vendor, Chrispianos Belcher, had good, valid title thereto, superior to any other claimant thereof," etc. In the outset of his petition he says that *he* is the owner (not the *former* owner) of the land, and he files his deed from Chrispianos Belcher as evidence of his ownership And the Simmons Creek Coal Company files with its answer a copy of the deed of R. B. McNutt, Commissioner of School Lands, to G. W. Belcher for the land sold to him in said proceedings as part of its claim of title, marked "XX." Record, p. 48. Statement No. 2 of the report of the Commissioner to whom Belcher's petition was referred, says: "Said tract of land was forfeited in the name of Chrispianos Belcher about the year 1863, by reason of omission from the land books, and at the time of the forfeiture of said land the legal title was in said Chrispianos Belcher." These being the facts, and the privilege of redemption being given, alone, to the *former* owner of the land, or to his creditors having liens on the land for the payment of their debts, by

the statute, it is very clear that George W. Belcher, who was neither the *former* owner of the land nor a creditor of the former owner, could not redeem the land in *his name* from forfeiture even if his petition had been filed in a pending proceeding by the Commissioner of School Lands, for the sale of the land mentioned in his petition. And it is equally clear that neither the said Chrispianos Belcher, the former owner of the land, nor one of his creditors having a lien on the land for the payment of his debt, could have redeemed the land from forfeiture by an independent proceeding, such as was resorted to by George W. Belcher. The privilege of redemption of forfeited lands given by the statute was simply a privilege personal to the *former* owner, or his creditors having liens on the land, and no others, and the *way*, *time*, *mode* and *manner* in which this privilege should be exercised, was prescribed by the section of the statute above quoted; and it could not be exercised by any other person in the lifetime of Chrispianos Belcher, nor in any other way than as prescribed by the statute. The deed of Chrispianos Belcher to George W. Belcher, mentioned in the petition of George W., was an absolute nullity so far as it purported to convey lands, the title to which was in the State by forfeiture, and George W. Belcher acquired no title whatever under that deed to such forfeited lands. George W. Belcher's petition describes the land as "a certain tract or parcel of land lying on Simmons creek, a branch of Bluestone river, in the county of Mercer, State of West Virginia, adjoining the lands of Witten, Sadler and others, containing about 75 acres." The land included in the lines of his deed did join the Sadler land from the line of Obadiah Belcher's land on the middle fork of Simmons creek down to the mouth of that creek. But it did not join the land of any Witten heard of in this case, and George W. Belcher, as the evidence in this case shows, knew that it did not. That is, it did not join any land *then* owned by any of the Wittens, but it did join the land formerly owned by William H. Witten, from the mouth of the middle fork of Simmons creek, up the left-hand fork of the creek to the white oak and two pines, corner to the land of said Witten and Graham Payne. He knew that all the surrounding lands ever owned by the Wittens had been sold and conveyed to Joseph I. Doran. But he ignored Mr. Doran by name, and includes him, I suppose, under the comprehensive term "others." And there can be no reasonable doubt that this redemption proceeding was a part of the plan agreed on by the *plotters* who now form the Simmons Creek Coal Company to defraud the appellee Doran of a part of his lands. The line of the

land from the two birches on Simmons creek to the six chestnuts is the same in the deed from Chrispianos to George W. Belcher, in the decree of the court in the redemption proceedings directing the deed to be made to George W. Belcher (record, p. 41), and in the deed from the Commissioner of School Lands to George W. Belcher. Record, p. 45. In all of them it is as follows: Beginning at two birches on the west bank of Simmons creek, corner to William H. Witten, thence with said Witten's line to six chestnuts, corner to A. G. Belcher, on a ridge."

And now let us see how the parties stand in reference to their respective claims of title to the land in question, under Chrispianos Belcher, the remote grantor of each of them. It is proved in the case, and not questioned by any one, that prior to 1852 Chrispianos Belcher had a good and valid title to the land in question in this suit. It is also proved that about 1844 he sold 800 acres of the land to which he had title, including the land in question, to Robert D. Belcher. It is also proved that at some time between 1844 and the latter part of December, 1852, and while his title to the land in question was good and valid, he conveyed the land in controversy, by deed, to Robert D. Belcher. And finally, it is proved that Robert D. Belcher sold the land in controversy to William H. Witten, and conveyed, or *attempted* to convey, the same to him by deed dated December 23d, 1852. But how is it with the claim of title of the Simmons Creek Coal Company under Chrispianos Belcher as its remote grantor? It has furnished record proof, and it took special pains to do it, that at the date of the deed from Chrispianos Belcher to Geo.ge W. Belcher, under which it claims title to the lands in controversy, Chrispianos Belcher had *no title* to the lands he attempted to convey, but that the title he once had, so far as it had not been conveyed to others, had long before that time been forfeited to the State of West Virginia, and was in that State at the date of said deed. And the contention of this company is that Witten's line, as called for in his deed from R. D. Belcher, from the two birches to the six chestnuts, is a straight line, such as is called for in the deeds of George W. Belcher to Reynolds and Rorer. And therefore all the land between that line and Simmons creek was included, according to its own contention, with the three-cornered piece in the forks of the creek, in the forfeiture. And, therefore, this company, by its *own* showing, has not a foot to stand upon in a court of justice, in the way of title to any part of the land mentioned in the deed of Chrispianos to George W. Belcher. All that it has is its fraudulent claim of title under fraudulent and inoperative

deeds, and its unlawful and fraudulent entry upon a part of the land in controversy, and the trespasses committed by it thereon under its fraudulent claim of ownership. These deeds under which this company *claims* title to the land in question being of record in Mercer county, and this claim of title and acts of ownership under them by this company, are unquestionably, I submit, a cloud upon the title of the appellee to the land in controversy, if he has title, which it is the province of a court of equity to remove. And now I propose to consider what effect, if any, the deed from Chrispianos Belcher to Joseph I. Doran has in this case, if the land in controversy was not forfeited to the State, as we claim, and have, I submit, clearly proved. Chrispianos Belcher, having sold and conveyed the land in question long years before to Robert D. Belcher, it could not be forfeited in his name after it was conveyed by Robert D. Belcher to Witten and entered on the land books of Mercer county and charged thereon with taxes in the name of Witten, and the taxes paid by him. And while Chrispianos Belcher did not own the land in controversy at the date of the deed to Doran, he had the undoubted right to execute the deed to take the place of the former deed executed by him to Robert D. Belcher, which was lost and never recorded, and thus to complete the appellee's *recorded* claim of title to the land in controversy. This deed contains numerous recitals, and among them, one to the effect that the grantor had already conveyed the land mentioned in it to Robert D. Belcher, and then he describes the land conveyed as follows: "All that certain tract or parcel of land situate on the waters of Bluestone river, in the county of Mercer, in the State of West Virginia, conveyed by me to the said Robert D. Belcher as aforesaid, containing (200) two hundred acres, more or less, and bounded as follows, to-wit: Beginning at (2) two birches on Simmons creek, and thence up said creek with William Miller's line and the meanders of the creek to William Miller's survey; thence with the same, leaving the creek, south 55 degrees west (S. 55 W.) (120) one hundred and twenty poles to the six chestnuts, corner to the said Miller survey," etc. This line as stated in this deed, is in exact accordance with the proofs in the case as to the line of the land *sold* by R. D. Belcher to Witten, and *intended* to be conveyed to him by the deed of December 23, 1852, and understood by both parties as conveying the land to Witten by the line as described in the deed of Chrispianos Belcher to Doran, while *in fact*, it failed to do so. This line, as stated in that deed, begins at the two birches on Simmons creek, corner to Chrispianos Belcher's land, "thence up said creek with Miller's

line S. 55 W 120 poles to six chestnuts, corner to Miller's survey." We have the same line, unquestionably, from the two birches to the forks of Simmons creek in both deeds, and we have the same course and distance called for in both deeds, S. 55 W. 120 poles to the six chestnuts. But in R. D. Belcher's deed to Witten the call is from the two birches to the six chestnuts, not only an absurdity, but an impossibility, while in the deed from Chrispianos to Doran, the call is from Simmons creek with the line of Miller's survey to the six chestnuts. Add to the line as called for in Witten's deed the words "and the meanders of the creek to William Miller's survey," and the line of both deeds would be exactly the same, and which the evidence in the case clearly shows would be in accordance with the contract of sale by R. D. Belcher to Witten, and the intent of the parties to the deed at the time of its execution. That it was the intention of the parties to this deed of Witten from R. D. Belcher to describe the line up Simmons creek to the Miller survey, is, I submit, almost a self-evident fact, to reasonable people, but whether a court of law, unaided by extrinsic evidence, could have so decided, is, to say the least, a matter of very grave doubt. I don't think it could. And to my mind there are three things positively certain as to this line: (1) That it can not be run under the call of Witten's deed from R. D. Belcher by a straight line from the birches to the chestnuts; (2) That the intention of the parties to this deed was to run up Simmons creek with Miller's line to the forks of the creek, and thence up the left hand fork of the creek to the line of Miller's survey, and with that line to the six chestnuts by the course and distance, S. 55 W. 120 poles, called for in the deed; and (3) That in an action of ejectment that line could not have been so run. Miller's line, as called for in this deed, runs up Simmons creek from the two birches to the mouth of the middle fork of that creek, at which point it leaves the main creek and runs up the middle fork to the line of Obediah Belcher's 400 acres, and with that line in the opposite direction from the chestnuts, to Flipping creek, as shown by all the maps in the case. And in an action of ejectment the first difficulty the court would have met with would have been to determine whether the line of Belcher's deed to Witten must be continued up the middle fork to the line of Obadiah Belcher's 400 acres, and from there by a straight line to the six chestnuts, or stop at the forks of the creek where Miller's line left the main creek, and run from there by a straight line to the six chestnuts. By reference to the decree map, made from actual surveys in this case, it will be seen that to run the lines up the middle fork to Obadiah Belcher's

line, and from there straight to the six chestnuts, would give to the appellee fully three-fourths of the 36 acres lying in the forks of the creek claimed by the Simmons Creek Coal Company, and which Witten never bought nor paid for, nor claimed title to, and which the appellee never bought nor claimed title to, and would deprive the appellee of a small portion of the land Witten did buy and pay for, and which the appellee has bought and paid for, and claims as his property. And to run the line from the forks of the creek straight to the six chestnuts would take from the appellee nearly one-third of the land Witten bought and paid for, and which he (the appellee) bought and paid for, and give him nothing in return. And under the law in force both in Virginia and West Virginia, this line *must* be run from the two birches up and with Simmons creek and Miller's line to the mouth of the middle fork of that creek. It was decided more than 70 years ago by the Court of Appeals of Virginia, to be "a universal rule that course and distance yields to natural and ascertained objects." And by the same court more than 60 years ago, that "where land is conveyed which is bounded by a water course, not navigable, such conveyance carries with it the title to a moiety of the bed of the water course."

DUGAN VS. SEEBRIGHT, 4 Henning and Munford's Virginia Rep. 125.

HAYS, EX., VS. BOWMAN, 1 Randolph's Va. Rep. 417, 420.

And the law of Virginia and West Virginia is still the same, as decided by these cases. But without extrinsic evidence as to what the contract and intent of the parties to this deed was, and the aid of a court of equity to supply what was by mistake omitted from the call of this deed of R. D Belcher to Witten, we could not run the line from the forks of the creek up the west or left hand fork of Simmons creek to the corner of Miller's survey *on* that creek, and from there with the line of that survey to the six chestnuts, nor from the end of Miller's line, on the middle fork, to the white oak and pines, corner to Witten and Graham Payne's land and Miller's survey, and thence to the six chestnuts. The answer of the Simmons Creek Coal Company, as we have seen, avers that Doran, the plaintiff below, had no standing in a court of equity. But it seems to me that the company has sufficiently and fully answered its own point of defense. It says:

"All the deeds that give any description of the lands claimed by both complainant and respondent, claim to run from the birches to the chestnuts by one line. Complainant, to get from one of these points to the other, is compelled to interpolate a second line from

the head of Simmons creek to the chestnuts." Exactly. That is just the thing the complainant was *compelled* to do, or have done, to get from one point to the other, in order to carry into effect the contract of the parties and the intent of the deed. And that was just the thing a court of law could *not* do, but which a court of equity *alone* could do. And which the court below, by the decree appealed from, *did* do.

And that the court was right in so doing, seems to me to be hardly a debatable question.

But suppose this court should hold that Witten's line under his deed from R. D. Belcher *must* be run, either from the forks of the creek to the six chestnuts by a straight line, or from the end of Miller's line on the middle fork straight to the chestnuts: this would give to the appellee all the land in *controversy*, between the line so established and the straight line from the birches to the six chestnuts, as shown on the decree map. And the forfeiture of the land outside of the line so established, would extend not only to the land in the forks of the creek, outside of Witten's line, but to all the other land inside of the lines of the deed of Chrispianos to George W. Belcher, not conveyed by R. D. Belcher's deed to Witten. What would be the duty of this court in the premises? It certainly would not reverse the decree of the court below, as to so much of the land in controversy as was included in the lines of Witten's deed as so established. And inasmuch as the Simmons Creek Coal Company has no legal or equitable right or title to, or interest in the land outside of the lines of the lands of the appelle so established, it is not in a position to have a reversal of the decree so appealed from to any extent whatever. The title to that part of the land so forfeited would still be in the State of West Virginia; and when the State chose to proceed to sell it for the benefit of the school fund, and not till then, Chrispianos Belcher could, in the manner and upon the terms provided by the statute, redeem it from the forfeiture. But this, I submit, is a contingency hardly to be anticipated under the evidence in this cause, direct and circumstantial.

CONSTITUTION OF WEST VIRGINIA, ARTICLE XIII., SECTIONS 4 and 5.

These sections provide as follows:

"4. All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited, or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, trans-

ferred or otherwise disposed of, the title whereto shall remain in this State till such sale as is hereinafter mentioned be made, shall by proceedings in the Circuit Court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

"5. The former owner of any such land, shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this State, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the Circuit Court that decrees the sale, within two years thereafter."

In the case of *McClure* v. *Maitland*, 24 West Virginia 561, the construction and effect of these sections was considered and decided by the Supreme Court of Appeals of this State. On pages 580, 581 of that case, Judge Snyder, delivering the opinion of the court, says: "But it is insisted that the section of the constitution referred to (meaning section 5) grants to the former owner such an interest in the land as entitles him to be heard. This position, I think, is likewise untenable. The preceding, or fourth section of the constitution, shows that the former owner, by reason of the forfeiture, was divested of every particle of interest in the land and its proceeds, and that he had no more title or right to either than if he had never had any interest in the land. It necessarily follows then that the grant or claim thus conferred upon him is a simple matter of grace, a gift without any consideration therefor, owing its whole existence to the volition of the grantor, and it is in no sense the recognition of a pre-existing right to, or claim upon the land or its proceeds. It is a mere bounty gratuitously bestowed by the State, which she had the undoubted right to give or withhold. And having this perfect right to give or not to give, the State unquestionably had the right, if she chose to make the gift, to fix not only its *quantum*, but also the form in which it should be received and the manner of its payment. This she has done in explicit terms by fixing the surplus as the *quantum*, the proceeds as the form and the filing of his claim therefor within two years *after* the sale of the land as the manner," etc. And again, on page 581, the court says: "'Beggars must not be choosers' is a just maxim, and, therefore, it is the duty of the courts to see that the bounty of the State is not used to her detriment by giving to this provision of her constitution a forced construction and one that could never have been intended." The constitution of

the State does not give to the former owner of the land the right to redeem it from forfeiture. All that it does give him is the surplus proceeds of the sale, as already stated. The right, or more properly speaking, the *privilege* of redeeming the land from forfeiture, is a creature of the statute alone, and *must* be exercised as provided by the statute. This point is fully discussed elsewhere in this brief (pp. 34, 35, 36) and will not be further discussed here, except to say that the reasoning of the court as to the *gift* of the surplus proceeds of the sale to the former owner of the land and the manner of obtaining it applies with equal force to the *redemption* of the *land* from forfeiture. And that it shows beyond dispute that Chrispianos Belcher, at the date of his deed to George W. Belcher, had no sort of right, title, interest or claim in the land mentioned in his deed, and that the title to the land he attempted to convey was in the State of West Virginia, by the showing of the appellants themselves, and still remains there.

Jurisdiction of the Court.

The defendants (now the appellants) in the court below, questioned the jurisdiction of the court in this case, (1) because there was no sufficient allegation of possession of the land in question by the plaintiff in the bill. The bill alleges (Record, p. 3), that the complainant, Doran, was "seized in fee of the said tract of 200 acres, more or less." The court decided this to be a sufficient allegation of possession of the land by him, and this Honorable Court has, since that decision, decided the same question in the same way.

Gage v. *Kaufman*, 133 U. S. 471.

(2.) Because, as they allege, the complainant by his own showing did not have the possession of that part of his "200 acres of land, more or less," in controversy in this case, at the time of filing his bill.

The bill alleges as a ground for the injunction to stay waste therein prayed for, that the Simmons Creek Coal Company claims a part of the most valuable portion of the said "200 acres, more or less," of the property of the complainant, and has, by its officers, agents, servants and employees, "actually entered upon and taken possession of said portion of your Orator's said land, and is now holding the same in opposition to and in defiance of him, and is committing waste thereon by cutting down and destroying your Orator's valuable timber, and is opening and preparing to open thereon coal mines, with a view to mining and shipping coal therefrom, and that

they will do so unless restrained therefrom by the order of your honor, and that if they are permitted to do so the injury thereby caused to your Orator will be irreparable."

These allegations, they alleged, deprived the court of jurisdiction of this case. And the Simmons Creek Coal Company, in its answer, admits the truth of all these allegations so charged, and a great deal more not charged in the bill nor proved in the case.

Plainly stated, the contention of the Simmons Creek Coal Company amounts to this: Conceding, that at the date of the several deeds under which it claimed title to that part of said 200 acres, "more or less," in controversy in this case, beginning with the deed from Chrispianos to George W. Belcher, the appellee Doran was seized in fee of the whole of said 200 acres, more or less, and that he had the actual possession of the whole thereof as far as it was susceptible of actual possession (it being in a wild and unimproved state); and having the undoubted right to go into a court of equity to remove the cloud upon his title created by the bogus and inoperative deeds under which said company claimed title to a part of the lands so owned and possessed by him, he could be divested of that right by the record of these deeds in the county in which the land lay, and setting up a claim of title to the land mentioned in them by said company, and the entry by the said company, its officers and agents, upon the said portion of the said lands under such claim of title, and the commission of waste thereon, as charged in the bill.

With all due respect to my friends on the other side, this contention of theirs is, as it seems to me, utterly preposterous. Their claim to the land in controversy was plainly fraudulent in its inception, and every step taken by them in it, including their unlawful entry upon it, was fraudulent. And when the said company, its officers, agents and employes, entered on the land and commenced to cut and destroy the timber and to open coal mines thereon, they were simply trespassers, nothing more nor less. The object of the defendants in all this is very apparent, and they had no doubt considered well before they determined upon what they did. It was a desperate game and they determined to play it. If they could bar the complainant of relief in a court of equity by an unlawful entry on his lands, and drive him to an action of ejectment to recover the lands in controversy, they no doubt relied upon the defect in the description of the line from the two birches to the six chestnuts in the deed of R. D. Belcher to William H. Witten, to defeat his recovery in whole or in part in the action.

The jurisdiction of courts of equity to remove a cloud from the title to land is as well settled as any other branch of equity jurisdiction. In some States it is regulated by statute, and in others, not. In Virginia and West Virginia, there are no statutes upon the subject. But the courts of those States exercise this jurisdiction without question. The few cases reported are generally cases to set aside defective tax deeds, which in most cases was done without regard to the question of possession, or to the fact that the complainant had an adequate remedy at law. But the case of Jarrell *v.* Jarrell, 27 West Virginia, 743, was different. In that case the defendant, John Jarrell, after conveying a tract of land to the complainant, Leftridge Jarrell, conveyed a part of the same land to the defendant, Madison Jarrell, who had conveyed the same to him, and Leftridge, instead of bringing an action of ejectment to oust Madison Jarrell from the possession of the land conveyed to him by John, and of which Madison had remained in possession for eleven years, supposing to be his own, brought his suit in equity to set aside the deed from John to Madison as a cloud upon his title. The suit was defended on the ground that there was a mistake in one of the lines of the land as set out in the deed for the same from the defendant, Madison Jarrell, to the defendant, John Jarrell, and in the deed of John to Leftridge Jarrell, the complainant. The court below sustained the defense, and denied the relief prayed for in the bill, and the complainant appealed. The court of appeals reversed this decree, and set aside the deed from John to Madison Jarrell as a cloud upon the title of the complainant to the land in question.

The counsel of the appellants in this case relied upon *that* case, in the court below, to show how *strong* the evidence must be to reform a written instrument, and while it certainly was *strong* on that point, it failed to serve them in *this* case, because while *that* was a case of conflicting evidence, there was no conflict in *this* case, the evidence being all on one side, and *none* on the other. And while it failed to serve them on that point, they found out, when it was too late, that it was *death* to them on the question of jurisdiction. I was in the defense of that case in the court below, and it seems to me that the court carried the doctrine upon the question on which they reversed the decree of the court below, beyond the bounds of justice and right, after declaring that the preponderance of the evidence was, in the opinion of the court, in favor of the defense. The jurisdiction of the court in this case is, I insist, main-

tainable on several grounds: (1) The complainant, as the evidence clearly shows, *had* all the possession of the land in question necessary to give the court jurisdiction of his case. (2) The court had jurisdiction to set up the lost and unrecorded deed of Chrispianos Belcher to Robert D. Belcher, for the land in controversy. (3) The court had jurisdiction to reform the deed of R. D. Belcher to William H. Witten, for the land in controversy, by correcting the line as called for therein from the two birches to the six chestnuts, so as to conform to contract of sale of the land between the parties and the intent of the parties when said deed was executed. (4) The court had jurisdiction to grant the injunction to stay waste prayed for in the bill. And the court having obtained jurisdiction of the case upon all or any of said grounds it had the right to retain the jurisdiction so acquired and dispose of the whole case.—Pomery's Equity Jurisprudence, vol. 1, sections 181, 231, 232. And (5) the court had jurisdiction of the case on the ground that the complainant had no certain and adequate remedy at law.

In an action of ejectment, as every lawyer knows, the plaintiff must recover upon the strength of his *own* title and *not* upon the weakness of the title of his adversary. And he must prove a perfect title to the land in contest in himself, before the defendant is called upon to prove anything. The land in controversy in this suit, as already shown, was at the commencement of this suit unenclosed and in a wild state; and while the complainant had all the possession of it of which it was susceptible, up to the time the Simmons Creek Coal Company, its officers, agents and employes intruded themselves upon it, he did not have that open, notorious and visible possession of it up to the line of Simmons Creek from the two birches to the corner of Miller's survey on the left hand fork of that creek, which was necessary to enable him to recover the possession of the land in controversy up to that line on proof of such possession alone, as he had of the land above the mouth of the middle fork of said creek. The deed from R. D. Belcher to Witten would have proved his title to all the land in controversy west of Simmon's creek from the two birches to the mouth of the middle fork of that creek. And what then? He had the right to go from there to the six chestnuts by *some* route, but what route was he compelled to travel to get there? The call of this deed did not take him even in the direction of the six chestnuts, nor did it take him in the direction of the line of Miller's survey on the left hand fork of Simmon's creek, and the line could not be so run, by operation of law,

from the mouth of said middle fork of Simmon's creek to the six chestnuts, by way of the left hand fork of said creek to the corner of Miller's survey thereon, and thence to the six chestnuts; nor would the plaintiff have been allowed by the court to prove by oral evidence that the land in controversy was bought by R. D. Belcher by that line, and sold by him to William H. Witten by that line, and was *intended* to be conveyed to Witten by that line, by the deed of the 23d of December, 1852, but by mistake in the drafting of said deed, it was not so expressed. And the consequence would have been that the plaintiff would have been compelled to go by a straight line from the mouth of the middle fork of said creek to the six chestnuts, whereby he would have lost nearly one-third of the land in controversy, he had bought and paid for, or to run up the middle fork of said creek to the end of Miller's line, and from there by a straight line to the six chestnuts, which line would have included a portion of land he never bought and did not own, and the title to which was in the State, and deprived him of a valuable portion of the land he had bought and paid for. And the only way by which the complainant could safely proceed to establish his right and title to *all* the land in controversy, was to invoke the powers of a court of equity to *do* what a court of law *could not* do: to reform the deed of R. D. Belcher to William H. Witten of the 23d of December, A. D., 1852, according to the contract for the sale of the land in controversy between the parties and the intent of said deed, at the time of its execution, and thereby give to the complainant a perfect and indisputable title to all the land he had bought and paid for, and which those under whom he claims said land, had bought and paid for, and to remove the cloud upon his title to said lands created by the deeds under which the Simmon's Creek Coal Company sets up its claim to said land; and all of which was done by the court below, in its final decree in this case. This decree is found on pages 185 to 188 of the record.

There is, I respectfully submit, no error in this decree, and that it should be affirmed. And I take the liberty of suggesting that the powers of a court of equity to remove clouds from titles is one of the most important and useful branches of its jurisdiction, and should rather be extended than curtailed. By it the deeds or other writings which create the cloud upon a title, are set aside, vacated and annulled by the decree of the court entered upon its records, which all can read and understand. But no such thing is done in an action at law; and the cloud, for all that appears of record, still remains.

And now, in closing this brief, I beg leave to say, that in view of the fact that the members of this Honorable Court are, I am sure, already fully advised as to powers and jurisdiction of courts of equity to remove clouds upon title, I have not deemed it necessary to refer to and discuss the numerous reported cases on that subject, referred to in Pomeroy's and other works on Equity Jurisprudence.

All of which is respectfully submitted.

JAMES H. FERGUSON,

Of Counsel for Appellee.

Transcripts
of
Records
1891

(788)

Supreme Court U. States

142 U. S.

396 - 417